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1 MEETING
2 STATE OF CALIFORNIA
3 CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
4 REGULAR MONTHLY BUSINESS MEETING
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10 Board Room
11 8800 Cal Center Drive
12 Sacramento, California
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17 Wednesday, March 27, 1996
18 9:30 a.m.
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24 Janet H. Nicol
Certified Shorthand Reporter
25 License Number 9764

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1 APPEARANCES

2 BOARD MEMBERS PRESENT:

3 Daniel G. Pennirigton, Chairman

4 Robert C. Frazee, Vice Chairman
Wesley Chesbro

5 Janet Gotch
Paul Relis

6

7 STAFF PRESENT:

8 Patti Bertram
Elliot Block

9 Ralph Chandler, Executive Director
Don Dier

10 Judith Friedman
Marlene Kelly, Committee Secretary

11 Dorothy Rice, Chief Deputy Director
Toni Terhaar

12 Kathryn Tobias
Lorraine Van Kekerix

13 Clint Whitney
Patty Zwarts

14

15 PUBLIC SPEAKERS:

16 Gordon Beers, Palo Verde Valley Disposal
Dan Colegrove, Grocery Manufacturers Association

17 Evan Edgar, CRRC
Gene Livingston, Cosmetic, Toiletry and Fragrance

18 Association and Soap and Detergent Association

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1 PROCEEDINGS

2 BOARD CHAIRMAN PENNINGTON: Good morning and
3 welcome to the March meeting of the Integrated Waste
4 Management Board.

5 Would the secretary please call the roll.

6 BOARD SECRETARY KELLY: Board Member Chesbro.

7 BOARD MEMBER CHESBRO: Here.

8 BOARD SECRETARY KELLY: Frazee.

9 BOARD VICE CHAIRMAN FRAZEE: Here.

10 BOARD SECRETARY KELLY: Gotch.

11 BOARD MEMBER GOTCH: Here.

12 BOARD SECRETARY KELLY: Relis.

13 BOARD MEMBER RELIS: Here.

14 BOARD SECRETARY KELLY: Chairman Pennington.

15 BOARD CHAIRMAN PENNINGTON: Here.

16 We appear to have a quorum. However, this is not
17 the same quorum as last month. This is the first meeting of
18 the Board without the participation of Sam Egigian, who was
19 an able advocate of the waste industry that he was appointed
20 to represent. He will be missed, his insights and his
21 knowledge of the industry and his participation in our
22 deliberations.

23 The industry should know that the Board members,
24 their offices and the Board staff are open to the industry
25 and the industry's interests and industry positions.

1 Also, Al Lipson, Sam's advisor, remains with the
2 Board and will continue to provide his able counsel on any
3 industry interests.

4 We shall miss Sam, but nothing has changed in the
5 Board's working relationship with the waste industry.

6 Okay. Do any members have any ex parte
7 communications to report today?

8 Mr. Chesbro.

9 BOARD MEMBER CHESBRO: In addition to the letters
10 which are, I believe, in everyone's agenda packet on Item
11 18, there's quite a list which I think will be entered into
12 the record. We received a later letter from the City of
13 Blythe, I believe addressed to you, Mr. Pennington. So I
14 wanted to enter that into the record.

15 BOARD CHAIRMAN PENNINGTON: I don't think I've
16 seen that.

17 BOARD MEMBER CHESBRO: I also had a verbal
18 ex parte yesterday on the issue of alternative daily cover
19 with Kent Stoddard of WMX, and Mark Murray of Californians
20 Against Waste.

21 BOARD CHAIRMAN PENNINGTON: Ms. Gotch.

22 BOARD MEMBER GOTCH: I believe I'm current on all
23 my written ex partes, I hope.

24 BOARD CHAIRMAN PENNINGTON: Okay. Mr. Relis.

25 BOARD MEMBER RELIS: No.

1 BOARD CHAIRMAN PENNINGTON: Mr. Frazee.

2 BOARD VICE CHAIRMAN FRAZEE: Mine are all recorded

3 and filed.

4 BOARD CHAIRMAN PENNINGTON: I believe mine are

5 too.

6 I have a few announcements to make in the agenda.

7 One is that first I must apologize, I may be

8 called out sometime during the day to go to something

9 downtown, so I may have to turn it over to Mr. Frazee.

10 Also, because of that I would like to move the

11 item on committee assignments up to after my report on the

12 Admin Committee.

13 Also, Items 6-E, 21-B and 24 have been pulled from

14 the agenda.

15 Also, I'd like to remind everybody that persons

16 interested in addressing the Board need to complete a

17 speaker's request form, which you can find at the end of the

18 table at the back of the room. And if you'll give them to

19 Ms. Kelly, our secretary, they'll pass them on up to us.

20 We'll begin with the reports of the Board

21 committees, starting with Mrs. Gotch, Legislative and Public

22 Education Committee.

23 BOARD MEMBER GOTCH: Thank you, Mr. Chair.

24 The Legislation and Public Education Committee met

25 on March 21st to consider ten State legislative measures.

1 The committee actually only heard nine of the ten State
2 bills, because Assemblymember Davis requested that we pull
3 AB 3285 from the calendar pending some additional
4 amendments.

5 On today's Board agenda we will consider these nine State
6 measures, of which six are on the consent agenda or
7 calendar.

8 The three bills that are before us today are AB 3358,
9 Ackerman, a Board-sponsored measure which makes code
10 cleanup changes in various areas related to solid waste
11 management. The committee voted to support this bill,
12 however CAW expressed some concerns about one aspect of the
13 bill, so staff will be getting back to us on that today.

14 SB 1155, Maddy and Costa, which repeals the
15 Board's RPPC program. The committee voted 2 to 1 to oppose
16 this measure.

17 SB 1535, Killea, which extends the Board's RNDZ loan
18 program until the year 2006. The committee voted to support
19 this bill, however various amendments were suggested and
20 staff was directed to discuss these amendments with the
21 Board today.

22 The committee also heard a presentation on public education
23 issues. Some of the items discussed were the Bay Area Shop
24 Smart Campaign, workshops on how to provide effective
25 business assistance, and a report on community

1 pilot audits conducted in four various jurisdictions in the
2 State.

3 In the future I'd like to ask staff to include the
4 public education presentation materials in the Board packet.

5 And I believe they're in your packet today as a matter of
6 fact.

7 I'd also like to remind everyone that we're on the
8 Internet and that the public can access our home page to
9 obtain information on line, including the Board's agendas.

10 And that completes my committee report. Thank
11 you.

12 BOARD CHAIRMAN PENNINGTON: Thank you, Mrs. Gotch.
13 Local Assistance and Planning Committee, Wesley
14 Chesbro.

15 BOARD MEMBER CHESBRO: Yes, Mr. Chairman.

16 Before I make my report I wanted to respond to
17 Item 24 being withheld or pulled off the agenda.

18 Our normal procedure, as I understand it, is for
19 that to occur, if something has already passed, on the basis
20 of consensus amongst Board members. And I understand that
21 there was an effort to communicate between Board members.
22 I've been out of town for a couple of days, may have been
23 hard to reach, but nonetheless I was not, nor were my
24 advisors, consulted on that.

25 I just want to be reassured that the jurisdiction

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1 or the parties involved have the opportunity to make their
2 case to the committee at some future date.

3 But I wanted to know what the intention was in
4 terms of withholding the item. I'm not advocating that we
5 debate it today. I just want to make the point about
6 procedure.

7 BOARD CHAIRMAN PENNINGTON: I think it's intended
8 to come back to the committee.

9 BOARD MEMBER CHESBRO: It that the intent?

10 BOARD CHAIRMAN PENNINGTON: Yes.

11 BOARD MEMBER CHESBRO: Again I just wanted to
12 reinforce that our normal process is for there to be
13 consensus before an item, that it's already been approved by
14 committee, before that item is pulled.
15 Thank you.

16 BOARD CHAIRMAN PENNINGTON: Okay.

17 BOARD MEMBER CHESBRO: Turning to my committee
18 report, the Local Assistance and Planning Committee received
19 updates from the Diversion and Planning and Local Assistance
20 Division and the Waste Prevention and Market Development
21 Division.

22 We considered 24 planning documents which
23 represented 17 jurisdictions. All of those plans are on the
24 consent calendar.

25 I would like to highlight two of the items that

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1 are on consent.

2 First of all, Merced County and the cities of

3 Atwater, Dos Palos, Gustine, Livingston, and Los Banos and

4 Merced have joined together to form an agreement to become

5 the Merced County Regional Agency. This is the second

6 regional agency agreement to come before the Board as a

7 significant step in terms of local government cooperation to

8 reduce costs and streamline the 939 implementation process.

9 The Merced County also submitted a plan summary

10 and siting element and with the approval of these documents

11 today this county and the cities will have completed the

12 planning process, receiving approval for all of their

13 documents.

14 Committee also approved two more compliance

15 reports for the Rigid Plastic Packaging Container Program.

16 The reports were submitted by Red Gold Incorporated and

17 Sally Beauty Company. The reports demonstrate that

18 manufacturers are taking and will continue to take all

19 feasible actions to ensure that reduction, recycling and

20 reuse of plastics under the law.

21 Two other items of note are that two State offices

22 will participate in waste reduction, a waste reduction pilot

23 project where Board staff will be assisting them in

24 developing and implementing a waste prevention program. The

25 staff will be drawing from our own in-house waste prevention

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1 program success in implementing those programs for other

2 State agencies.

3 The committee also received an update on the

4 Project Recycle and School Diversion Programs and there's

5 exceptional numbers to report. As of 1995, 25,139 tons of

6 materials have been recycled, which was an eight percent

7 increase over 1994. And during 1995 the number of new

8 recycling programs at State agencies and at schools

9 increased from 597 to 935 programs, a 56 percent increase.

10 And there are now a total of 957 programs at the

11 approximately 3,000 State facilities.

12 I really want to commend the staff from both the

13 Waste Prevention Program and the Project Recycle Program for

14 doing an outstanding job in getting these programs going and

15 I think the committee gave them a significant amount of

16 feedback and I wanted to acknowledge them at the Board

17 meeting as well.

18 So that completes my report, Mr. Chairman.

19 BOARD CHAIRMAN PENNINGTON: Thank you,

20 Mr. Chesbro.

21 Market Development Committee, Mr. Relis, Chair.

22 BOARD MEMBER RELIS: Mr. Chair, we have just two

23 loan items on consent and then we have — that was, yes.

24 And then we have a report, received an extensive

25 report from the compost demonstration contractors, which

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1 include UC Cooperative Extension and participants from five
2 different agricultural areas of the State.

3 I think the most important thing to note there was
4 that in this report, which now represents about two years of
5 research, the key results, though preliminary still, are
6 that compost is showing signs of having an effect of disease
7 suppression in the area of fresh peaches and onions. Yields
8 on all crops, except in one nursery test, appear to be at
9 comparable levels to noncompost applications.

10 I think the Board should be commended as a whole
11 for engaging in this project. I think it's the largest such
12 project in the U.S. today and we are now seeing the fruits
13 of a couple of years of work.

14 We still have time ahead of us, another year
15 before these projects are fully tested and where we get the
16 final results, but I think for those in attendance at that
17 meeting it was a interesting and positive outcome.

18 BOARD CHAIRMAN PENNINGTON: Very good. Thank you.

19 Permitting and Enforcement Committee, Mr. Frazee.

20 BOARD VICE CHAIRMAN FRAZEE: Yes, Mr. Chairman.

21 The committee met on March 6th with a short agenda
22 and that was probably good in that we also had a short
23 committee with the departure of Mr. Egigian.

24 The items that are on today's regular agenda, Item
25 23, adoption of a negative dec for the Chester/Lake Almanor

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1 Solid Waste Transfer Station, that is before us inasmuch as
2 we are the lead agency in that particular application.

3 And then Item 25 will be a staff recommendation on
4 the statutory requirement that unpermitted solid waste
5 facilities cease operation on October 16th, 1996, known as
6 the AB 59 issue.

7 The committee also discussed an item on the
8 delegation of authority to the executive director for
9 standardized permits. That item was sent back to staff for
10 additional work.

11 The remaining item is a revised permit for the
12 North Fork Transfer Station in Madera County. That's on
13 today's consent agenda.

14 On the item that Mr. Chesbro raised, Item 24, that
15 we have pulled, I think an explanation is probably in order.

16 And let me apologize to the fact that we failed to
17 communicate with everyone on this.

18 The committee on a 2 to 0 vote, based upon the
19 staff recommendation, did forward that item to the Board.

20 Subsequent to that I visited the site and that
21 visit caused me some concerns about the local agency's
22 pursuing a responsible party in this particular cleanup
23 program and whether or not the district attorney in that
24 county is diligently pursuing some kind of an enforcement
25 action against the party responsible for the cleanup.

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1 So we had a circumstance where we were prepared to
2 spend public money to clean up a site where both the
3 property owner was known and the responsible party was known
4 and they're both there with ownership of the property, and
5 so that raised some questions on my part about the
6 appropriateness of that grant.

7 It will be back before us in the future.

8 BOARD MEMBER CHESBRO: To be fair, you did discuss
9 your concerns with me. It's just — it was just the
10 procedural question of when the conclusion was reached that
11 there was a good idea to pull it, that we, I think, got left
12 out of the loop.

13 So but I do understand the issues and I was just
14 raising it for procedural reasons.

15 BOARD CHAIR I'IAN PENNINGTON: Okay. The Policy,
16 Research and Technical Assistance Committee did not meet
17 this past month, and so I will report on the Administration
18 Committee.

19 The Administration Committee met on March 5 and
20 discussed two items. Both are on consent calendar.
21 The first item was the annual award of block
22 grants for the used oil recycling program. All 192
23 applications were funded, for approximately \$8.5 million.
24 And I think Mrs. Gotch is going to speak to that
25 when we're through.

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1 In addition to making the awards, the committee
2 requested that staff look into the formula for distributing
3 these grants for the future. Currently these funds are
4 allocated on a per capita basis, which may discourage
5 smaller rural communities from applying for these funds.
6 Staff will look at a possibility of setting a
7 threshold award for the smaller jurisdictions and will
8 report back to the committee.
9 The second item was the award of 38,600 for the
10 fiscal year '95-96 contract savings to augment existing
11 contracts. These funds will be used to complete activities
12 for the RPPC rate calculations, estimated construction and
13 demolition waste, enhance the computer system of CalMAX and
14 the WRAP, and fund Mini MAX, round table discussions and
15 complete the winners of the WRAP of the year award.
16 I'd also at this point like to take up Item 26,
17 which is the consideration of Board committee assignments.
18 As I said, Mr. Egigian is no longer on the Board
19 and we have vacancies on three Board committees, the
20 Administration Committee, the Permit and Enforcement
21 Committee, and the Policy and Technical Research Committee.
22 With concurrence with the Board members I would
23 propose making some temporary committee assignments by
24 adding Mr. Frazee to the Administration Committee,
25 Mrs. Gotch to the Policy, Research and Technical Assistance

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1 Committee, and myself to the Permitting and Enforcement

2 Committee.

3 And I will ask that Mr. Paul Relis serve as the

4 Chair of the Policy, Research and Technical Assistance

5 Committee, which he is currently a member..

6 Of course these would be temporary assignments

7 until the Governor makes a new appointment to the Board and

8 at that time we will review the assignments again.

9 If I can have a motion.

10 BOARD VICE CHAIRMAN FRAZEE: Yes, I'll move

11 concurrence of those assignments.

12 BOARD CHAIRMAN PENNINGTON: I have a second.

13 BOARD MEMBER GOTCH: I'll second.

14 BOARD CHAIRMAN PENNINGTON: It's been moved and

15 seconded that these assignments be adopted on a temporary

16 basis.

17 Will the secretary call the roll, please.

18 BOARD SECRETARY KELLY: Board Member Chesbro.

19 BOARD MEMBER CHESBRO: Aye.

20 BOARD SECRETARY KELLY: Frazee.

21 BOARD VICE CHAIRMAN FRAZEE: Aye.

22 BOARD SECRETARY KELLY: Gotch.

23 BOARD MEMBER GOTCH: Aye.

24 BOARD SECRETARY KELLY: Relis.

25 BOARD MEMBER RELIS: Aye.

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1 BOARD SECRETARY KELLY: Chairman Pennington.

2 BOARD CHAIRMAN PENNINGTON: Aye.

3 I think Mrs. Gotch wants to talk about the oil.

4 You want to do that now or you want to do it — 5 BOARD MEMBER

GOTCH: Before consent.

6 BOARD CHAIRMAN PENNINGTON: Sure.

7 Next we have the report from the executive

8 director, Mr. Chandler.

9 EXECUTIVE DIRECTOR CHANDLER: Thank you,

10 Mr. Pennington. And good morning, members.

11 I have a number of quick items to run through

12 today.

13 First, I'd like to report on the contaminated soil

14 regulations. I'm pleased to report that OAL approved our

15 contaminated soil regulations on Monday, March 24th.

16 As you know this is the second slotting under our

17 general methodology for the slotting of facilities within

18 the tiered permitting structure.

19 These regulations will become effective April

20 24th, 1996.

21 As I've indicated to you in the past I'd like to

22 give my brief monthly update on our Paso Robles project.

23 The City of Paso Robles has revised the project description,

24 which as you know forms the basis for the CEQA analysis.

25 This version adds clarity and focus to the project

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1 description. Board staff are currently reviewing this
2 revision and once the City and the Board complete the
3 project description we will then meet with the Department of
4 General Services, who have on retainer CEQA-approved, if you
5 will, technical consultants, to arrange for the CEQA
6 analysis to be conducted.

7 Brief update on status of our AB 1220 regulations.

8 I would have to say that the reg development process is in
9 full swing. We held two workshops this month. Workshops
10 were held with both the industry and the LEA working group,
11 one in Sacramento and one in Southern California.

12 I'd like to acknowledge the P and E Division,
13 which has formed a task force, not only of their staff but
14 staff from our Planning and Local Assistance Division, and
15 Markets Division, as well as staff from the Water Board and
16 the LEA5 which will serve as a working group to do a final
17 edit of the first draft of the regs that should be completed
18 later this week.

19 Final draft will be ready in mid-April for an
20 informal comment period before submitting the formal
21 rulemaking to OAL, which will start the CAL process.

22 Update on our planning workshops, Meeting 50
23 Percent. As you know, we started these workshops statewide
24 last fall. Our next scheduled workshop will be held in
25 Sacramento on April 18th. Purpose of that workshop is

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1 focused to really receive input from rural jurisdictions,
2 the Regional Council of Rural Counties is meeting that day,
3 as well as to receive input from our Local Government
4 Technical Advisory Committee. As I indicated, these groups
5 will be in Sacramento.

6 Staff have prepared a summary of the comments from
7 the first two workshops. Comments from the upcoming
8 workshop will be incorporated into the staff work to date to
9 develop an agenda item covering where these initiatives are
10. currently placed in program work that's underway currently
11 at the Board, as well as strategies for new proposals that
12 have been identified through these workshops and how the
13 Board can then consider additional strategies as we move
14 forward towards the 50 percent goal.

15 The agenda item will come forward in late spring
16 or early summer and I indicated that we'll be pulling that
17 together over the next several months.

18 on a related item, we established a work group on
19 the baseline inaccuracies. As you know, many local
20 jurisdictions are concerned about some of the inaccuracies
21 to their baseline number of 1990. The group was created to
22 assist Dr. Eugene Tseng in identifying issues and possible
23 solutions to this problem. This group will be meeting later
24 this week, with another meeting to follow to identify
25 solutions to the base year reporting issues.

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1 Comments will then be summarized and presented to

2 the Board for consideration.

3 We had a Senate budget subcommittee briefing

4 earlier this month. Our Senate budget subcommittee hearing

5 has been set for April 18th. We attended a prehearing

6 meeting last week with Senate staff. Major focus was on the

7 tire BCP with concerns raised relative to the need for the

8 augmentation and the best form of expenditure to get the

9 best results under that program. You'll be hearing more on

10 this matter later.

11 However, I have asked Deputy Director LaVergne to

12 put together a complete summary of the prehearing, as well

13 as the pending -- the response to the LAO's report that

14 staff have prepared and you will receive that this week.

15 My last item, which is on a very positive note, is

16 I'd like to, if I could, step around front and just

17 acknowledge the retirement of an individual who has been

18 with the Board. So if I could I'll step away from the dais

19 and ask that Bob Stone come forward, if you would.

20 Members and members of the audience, Bob began his

21 State service career in April of 1981 at the Department of

22 Health Services, an environmental health specialist. He

23 came to the Board in 1990 as a supervisor, waste management

24 specialist to our enforcement unit in our Fullerton office.

25 Supervised staff there, not only in inspection of landfills,

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1 but a number of programs that we moved in the public

2 education and outreach area.

3 Bob, we've presented, prepared a resolution which

4 I'd like to read. It's short, but I think it's fitting and

5 certainly speaks to many of your accomplishments. So if I

6 could.

7 Resolution commending Robert Stone.

8 Whereas Bob Stone is retiring on April 12, 1996,

9 after 15 years of loyal State service; and whereas Bob has

10 been an outstanding manager and supervisor for the

11 California Integrated Waste Management Board; and whereas

12 Bob has demonstrated a personal commitment to reduce,

13 reuse, recycle and buy recycled by practicing what he

14 preaches; and whereas Bob has brought sound leadership to

15 the Fullerton office and has mentored numerous staff by

16 inspiring them with his sage wisdom, integrity and dry

17 humor; and whereas Bob has done everything he can to make

18 sure that the Fullerton office never resembles a Dilbert

19 cartoon; and whereas Bob has set an example of excellence

20 for all his peers by his hard work, dedication and

21 professional ethics; and whereas Bob has demonstrated

22 flexibility and teamwork by taking on a variety of

23 assignments with professionalism and a positive attitude;

24 whereas Bob has served in a variety of management roles from

25 enforcing landfill regulations to promoting public education

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1 objectives for the protection and betterment of all citizens
2 of California; now, therefore be it resolved that we
3 recognize Bob Stone on this 27th day of March 1996, for his
4 excellent service to the California Integrated Waste
5 Management Board and the citizens of California.

6 Signed by Mr. Pennington, Mr. Frazee, Mr. Chesbro
7 and Ms. Gotch and Mr. Relis and myself.

8 So, Bob, thank you very much. Congratulations.

9 (Applause.)

10 That concludes my report, Mr. Chairman. Thank
11 you.

12 BOARD CHAIRMAN PENNINGTON: Okay. Now we'll take
13 up the consideration of the consent agenda.

14 Two things.

15 Mrs. Gotch would like to speak to this item.

16 And we also have to officially approve the pulling
17 of Item 24 before we have the consent.

18 BOARD MEMBER GOTCH: Thank you, Mr. Chair.

19 Before we approve the consent agenda I'd like to
20 give clarification to a question that I had asked in our
21 Admin Committee regarding Item No. 4 on today's agenda.
22 I'd asked staff whether the Board could set a
23 minimum grant amount for rural jurisdictions who might not
24 apply for these grants because the cost is more than the
25 amount that they would be awarded.

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1 Only about 80 percent of the California population
2 is represented in the applications that are recommended for
3 used oil grant funding. That leaves 20 percent of the State
4 population that may be eligible, but not touched by used oil
5 education program.

6 Staff, after talks with legal, indicate that
7 statute doesn't allow the Board to establish a minimum grant
8 amount. If that in fact is true, then I'd like to address
9 this issue by amending Ackerman's AB 3358, the Board's
10 cleanup measure, in Item 6-G, with language that will give
11 the Board the authority to set a minimum grant level.

12 Thank you.

13 BOARD CHAIRMAN PENNINGTON: Okay. Thank you.

14 Now we need a motion to pull Item 24.

15 BOARD VICE CHAIRMAN FRAZEE: Yes, Mr. Chairman.

16 I'll move that Item 24 be removed from consideration today
17 and rescheduled to a later date.

18 BOARD CHAIRMAN PENNINGTON: Okay.

19 BOARD MEMBER RELIS: Second.

20 BOARD CHAIRMAN PENNINGTON: Mr. Relis seconds.

21 Will the secretary call the roll.

22 BOARD SECRETARY KELLY: Board Member Chesbro.

23 BOARD MEMBER CHESBRO: Aye.

24 BOARD SECRETARY KELLY: Frazee.

25 BOARD VICE CHAIRMAN FRAZEE: Aye.

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1 BOARD SECRETARY KELLY: Gotch.

2 BOARD MEMBER GOTCH: Aye.

3 BOARD SECRETARY KELLY: Relis.

4 BOARD MEMBER RELIS: Aye.

5 BOARD SECRETARY KELLY: Chairman Pennington.

6 BOARD CHAIRMAN PENNINGTON: Aye.

7 Now, consideration of the consent agenda items.

8 Consent agenda includes Items 4, 5, 6-A, B, C, D, F
9 and J, 7 through 17, 20, 21-A, and 22.

10 Is there any member who wishes to pull an item off
11 consent agenda?

12 BOARD VICE CHAIRMAN FRAZEE: Just ask one question
13 with regards to Mrs. Gotch's proposal. Do we need a
14 separate vote on that on asking that that be included
15 in the legislation?

16 MS. TOBIAS: You can take it up under the legislative
17 item. If you want to discuss this agenda Item 4, you
18 need to take it off the consent.

19 BOARD VICE CHAIRMAN FRAZEE: Because it is on the
20 consent list right now; isn't it?

21 BOARD MEMBER GOTCH: The bill is not on consent.

22 BOARD VICE CHAIRMAN FRAZEE: It's not.

23 BOARD MEMBER GOTCH: It's Ackerman's bill.

24 So I would like to discuss it then when we come to
25 legislation. Thank you.

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1 BOARD VICE CHAIRMAN FRAZEE: I'll move consent

2 calendar then, Mr. Chairman.

3 BOARD CHAIRMAN PENNINGTON: Okay.

4 BOARD MEMBER GOTCH: Second.

5 BOARD CHAIRMAN PENNINGTON: Mrs. Gotch seconds.

6 Secretary call the roll, please.

7 BOARD SECRETARY KELLY: Board Member Chesbro.

8 BOARD MEMBER CHESBRO: Aye.

9 BOARD SECRETARY KELLY: Frazee.

10 BOARD VICE CHAIRMAN FRAZEE: Aye.

11 BOARD SECRETARY KELLY: Gotch.

12 BOARD MEMBER GOTCH: Aye.

13 BOARD SECRETARY KELLY: Relis.

14 BOARD MEMBER RELIS: Aye.

15 BOARD SECRETARY KELLY: Chairman Pennington.

16 BOARD CHAIRMAN PENNINGTON: Aye.

17 Okay. Agenda Item G 6, consideration of State

18 legislation, AB 3358, Ackerman, solid waste management.

19 Ms. Zwarts.

20 MS. ZWARTS: Good morning, Board members. I'm

21 Patty Zwarts with the Office of Legislative and Regulatory

22 Affairs.

23 You have three bills before you today under this

24 item.

25 The first one you mentioned is AB 3358, Ackerman,

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1 which is the Board's own sponsored bill.

2 This bill is in Assembly Natural Resources, set

3 for hearing on April 8th.

4 The committee's recommendation is that we support

5 with the suggested amendments and that we report -- the

6 staff report back to the Board on a particular amendment

7 that the Californians Against Waste had some issue with.

8 And I'm here to report on that, our information from that.

9 The Californians Against Waste had issue with one

10 of our amendments, definition of disposal, which struck the

11 words air and water from the definition.

12 The definition was so stricken to be consistent

13 with AB 1220 from a couple years back where we had taken

14 that language out consistently across the Public Resources

15 Code.

16 We have since spoken to legal staff on this and

17 indicated that the concern that CAW had that they were

18 concerned that this would exclude transformation from being

19 counted is incorrect. There is a definition in the code of

20 transformation that does cover their issue. So their

21 concern that transformation not be deleted from counting is

22 addressed in the existing law, therefore the amendment that

23 is proposed is not a concern.

24 BOARD CHAIRMAN PENNINGTON: Okay. Californians

25 Against Waste are all right with it now?

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1 MS. ZWART5: I haven't talked to Rick Best about

2 that, but this is just talking to our legal counsel and our

3 program staff about it and addressing their concern.

4 BOARD MEMBER CHESBRO: Mr. Chairman.

5 BOARD CHAIRMAN PENNINGTON: Yes, Mr. Chesbro.

6 BOARD MEMBER CHESBRO: The language that CAW

7 pointed out to me doesn't talk about air and water. And I'm

8 looking at page 59, agenda page 59. If you look under

9 Amendment 1, the part where there's a strike-out there.

10 Is everybody up with me?

11 It strikes from the definition of disposal the

12 phrase "management of solid waste through landfill disposal

13 or transformation at a permitted solid waste facility," and

14 replaces that with "final disposition of solid wastes onto

15 land," which basically removes transformation from the

16 definition of disposal.

17 And so that's a little different from what I just

18 heard described.

19 Can you clarify that, Patty?

20 MS. ZWARTS: Wesley, I think you are -- we're both

21 correct here. CAW originally had raised concern with an

22 amendment in the bill in print. We also have a number of

23 suggested amendments that we have attached.

24 It is true in talking -- I hadn't brought this up

25 yet to the Board, but staff are also requesting that we

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1 rework Amendment No. 1 in the suggested amendments, because

2 that one is an issue. We do need to rework that.

3 BOARD MEMBER CHESBRO: But that's not the

4 amendment that you had been talking to them about?

5 MS. ZWARTS: No. That's not the amendment that

6 Rick Best had raised as an issue.

7 But he would have issue with that, as you have

8 just mentioned. He just didn't notice it.

9 So my suggestion to the Board is that we rework

10 Amendment 1 in the attachment with the work of legal and

11 program staff.

12 BOARD CHAIRMAN PENNINGTON: Okay.

13 BOARD MEMBER RELIS: Mr. Chair.

14 BOARD CHAIRMAN PENNINGTON: Yes.

15 BOARD MEMBER RELIS: Just a point of

16 clarification.

17 Wasn't one of their concerns, one of CAW's

18 concerns, that maybe we can just state this, if their

19 interpretation of what was being said was in fact accurate,

20 they were inferring from that, would it mean that a solid — 21

transformation facility would be precluded from being

22 considered? Would a transformation facility be precluded

23 from receiving a solid waste facility permit? And that's

24 not the case. Isn't that very clear?

25 MS. ZWARTS: I believe that's correct.

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1 BOARD MEMBER RELIS: But let's just hear it from

2 someone here. Staff? Legal?

3 MR. BLOCK: And I actually caught about the last

4 half of the question, but is the question is --

5 BOARD MEMBER RELIS: What they seem to be

6 suggesting or their concern was about whether if the wording

7 as proposed was made would that somehow mean that a

8 transformation facility would not have to receive a solid

9 waste facility permit? And I don't read that, but I'd

10 like --

11 MR. BLOCK: Right. That wouldn't, because the

12 requirement for permit for transformation facility is in the

13 definition of solid waste facility, which includes a

14 transformation facility and then all --

15 BOARD MEMBER RELIS: Well, I just wanted to state

16 that and hear your answer.

17 BOARD MEMBER CHESBRO: Mr. Chairman.

18 BOARD CHAIRMAN PENNINGTON: Yes.

19 BOARD MEMBER CHESBRO: Well, I guess my question

20 is if the language that CAW is concerned about, if what they

21 were -- if the staff says that that was not the intent and

22 that's not what it means, then I'm still not clear on what

23 it is we're trying to achieve by that change in the

24 language, if it's not to shift away from the regulatory

25 oversight or concern of the Board with transformation

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1 facilities, what is its intent?

2 MS. ZWARTS: Wesley, I think we're not speaking to

3 Amendment 1, but we're speaking to what's in the bill.

4 What is at issue there is when we went through AB

5 1220 couple years back we systematically struck any

6 reference to air or water throughout the PRC, believing that

7 that was the purview of the Water Board and the Air Board.

8 There also is a law indicated that we should not duplicate

9 or overlap with them. So it is consistent with that.

10 Instead we have other provisions in law that

11 protect the public health and the environment and those

12 general provisions cover a lot of issues. So by striking

13 air and water it seemed, you know, it was fine.

14 BOARD MEMBER CHESBRO: Well, I continue to have

15 concerns with this amendment idea, so if we are going to

16 move with the bill it seems to me we might want to hold off

17 and further examine its implications, because it's not the

18 language that's in the bill, but the suggested amendments

19 that I was referring to on page 59, that we not necessarily

20 be endorsing that amendment at this time if we do go ahead

21 with the support for the bill.

22 CHIEF DEPUTY DIRECTOR RICE: My understanding is

23 staff is not asking for endorsement of Amendment 1 at this

24 time. Once the issue was raised, staff acknowledged there

25 is a concern with Amendment 1 and we do need to rework it or

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1 abandon it. So that was part of Ms. Zwarts' presentation.

2 BOARD MEMBER GOTCH: Mr. Chair.

3 BOARD CHAIRMAN PENNINGTON: Yes.

4 BOARD MEMBER GOTCH: I'd like to ask if we can

5 pass on this bill until later in the agenda for

6 clarification. We may also hear back -- I'd heard that

7 Mr. Best was going to be here. Maybe --

8 BOARD CHAIRMAN PENNINGTON: Sure. If there's no

9 objection, we can move this to a later date on the agenda

10 today. You still want to take it up today, though; correct?

11 BOARD MEMBER GOTCH: Yes. Yes; I'd like to.

12 BOARD CHAIRMAN PENNINGTON: All right.

13 MS. ZWARTS: We can move to the --

14 BOARD CHAIRMAN PENNINGTON: Item H.

15 MS. ZWARTS: SB 1155 by Maddy and Costa. This

16 bill is off the Assembly and on to the Senate side. It's

17 not been referred to committee as yet.

18 This bill would repeal the Rigid Plastic Packaging

19 Container program administered by the Board.

20 The committee recommendation on this bill was to

21 oppose on a vote to 2 to 1.

22 BOARD CHAIRMAN PENNINGTON: Okay. Is there any

23 discussion on this bill?

24 BOARD MEMBER GOTCH: Yes. I have some questions.

25 BOARD CHAIRMAN PENNINGTON: Okay.

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1 BOARD MEMBER GOTCH: And discussion.

2 I'm wondering if we have a position from the waste

3 industry or CSAC or the League on this bill?

4 MS. ZWARTS: I believe I haven't gotten anything

5 officially from CSAC or the League on this one.

6 BOARD MEMBER GOTCH: Or the industry?

7 MS. ZWARTS: Well, not from the -- do you mean the

8 solid waste industry?

9 BOARD MEMBER GOTCH: Correct.

10 MS. ZWARTS: Not officially.

11 BOARD MEMBER GOTCH: All right. My questions are

12 what happens if this measure passes, how many staff is

13 allocated to this program, how much money is the Board

14 allocated to the RPPC study, how would this program be

15 dismantled and what would be the cost to do so? And I don't

16 know if I'm putting you on the spot by asking those

17 questions. There might be other staff that might be able to

18 assist with these or not.

19 MS. ZWARTS: The bill would become effective

20 January 1st of the next year.

21 We currently have appropriated to the program, I

22 understand, one PY or \$65,000, and some contract cost for

23 \$25,000. This will be a half a year through the fiscal

24 year. I believe, I'm not sure, that's partly up to the

25 management of the Board, how they would like to deal with

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1 the program, if by statute it is repealed. But it would be
2 repealed halfway into a fiscal year, so for half the year
3 it is funded.

4 EXECUTIVE DIRECTOR CHANDLER: I would only add
5 that the analysis on the bottom of page 67 of the fiscal and
6 economic impact indicates that the repeal would result in a
7 cost savings of \$90,000 annually to our IWMA by eliminating
8 program costs. That would include one staff position of
9 65,000 and the annual contract cost of 25,000.

10 It seems to me, Ms. Gotch, that is the areas you
11 were looking at, personnel and programs costs.

12 BOARD MEMBER GOTCH: And the sunk costs in the
13 program.

14 EXECUTIVE DIRECTOR CHANDLER: Well, I don't
15 believe we have, as I indicated, we have one PY, one staff
16 position dedicated to this, and we have not, up until this
17 upcoming contract concept stage, dedicated any contract
18 dollars. As you know we have been working with the industry
19 on their retained consultant, Cascadia Corporation, and I
20 believe we have a contract concept before the advisors to
21 the tune of about \$35,000 to help us with the methodology
22 for next year.

23 So I'd say the sunk costs would be in the
24 neighborhood of \$90,000 annually, which represents the
25 \$65,000 budgeted amount of the PY and the annual contract

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1 costs that I just referenced.

2 BOARD MEMBER GOTCH: I have several comments I'd

3 like to make also.

4 SB 1155 repeals the Board's RPPC program which was

5 designed to assist us in reaching our 50 percent mandate by

6 encouraging the recycling of RPPC products.

7 This program has not yet been sufficiently

8 evaluated because the initial report on the program is not

9 due until next month. Thus we have no information on

10 whether or not the recycling rate has been met.

11 Plastic containers are becoming a greater part of

12 the packaging used, and by volume are a fairly significant

13 portion of the waste stream.

14 Additionally, as we all know, through various

15 surveys the public overwhelming believes that plastic should

16 be recycled.

17 From a business standpoint the Board's plastics

18 directory notes over 150 plastic businesses in 32 counties

19 statewide, employing hundreds.

20 An industry report indicates over \$1 billion has

21 been invested in recycled plastic equipment, research and

22 technology since 1990.

23 Our Board has issued several millions of dollars

24 in loans and grants related to plastic recycling statewide.

25 Simply put, repealing this bill is premature. An

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1 evaluation of the program has not been completed.

2 I can't see how or why this Board would vote to

3 repeal a program that is clearly designed to help our state

4 achieve the 50 percent mandate and continues to show that it

5 is creating jobs and stimulating the recycling market.

6 So I would move that we oppose this measure.

7 BOARD MEMBER CHESBRO: Mr. Chairman, I'd second

8 it.

9 And I'd like to make some additional comments.

10 BOARD CHAIRMAN PENNINGTON: Go ahead, Mr. Chesbro.

11 BOARD MEMBER CHESBRO: If there is one flaw or gap

12 in AB 939 it was that the emphasis for achievement was

13 placed almost entirely on the downstream end of the waste

14 stream, the disposal, trying to divert from landfills

15 through keeping materials out of the landfill and the burden

16 was placed almost entirely on local governments or

17 indirectly on the contractors or businesses that work with

18 local governments on their waste stream.

19 And that has worked fairly well considering the

20 fact that so little emphasis was placed on those who could

21 control what goes into the waste stream, which is the

22 manufacturers.

23 The Legislature quickly made up for that in a

24 variety of materials, ranging from newsprint to glass

25 bottles to plastic trash bags and they included the rigid

33

1 plastic containers.

2 There was a significant difference, however,

3 between how other packaging and materials were handled in

4 these kinds of laws as compared to the way rigid plastic was

5 handled.

6 In this case the plastics industry and the

7 companies that place materials in plastics had a significant

8 role in crafting this legislation. It was written with

9 multiple options with the maximum amount of flexibility. It

10 was touted by industry as the flexible market approach as

11 opposed to the narrow, commanding control approach that says

12 you must place a certain percentage of recycled content in

13 every package. And that was to their credit at the time.

14 They also committed to spend a significant amount

15 of resources on pursuing this, that I think have not come to

16 pass, that were committed in terms of the negotiations with

17 the author.

18 We have gone ahead and tried to make it work. And

19 I think this Board has worked very hard to make it as

20 flexible, to comply with the intent of the Legislature in

21 making this the most flexible program that we could,

22 recognizing that businesses need a wide variety of choices

23 in how to comply with the law and that we should look at the

24 results, not trying to dictate or micromanage how the

25 program would be implemented. And that's the way we

34

1 proceeded.

2 Now, what has happened is that local governments

3 and a number of businesses have invested substantially in

4 plastics recycling, in plastic recycling infrastructure and

5 in recycled plastic manufacturing in good faith in the

6 belief that this State government was going to follow

7 through and maintain its commitment to the law.

B And I think we would be double-crossing them.

9 We'd be letting them down if we fail to uphold this and if

10 the Legislature fails to uphold it.

11 I feel very strongly that we need to proceed with

12 this program.

13 My challenge to industry is to take the same

14 position that they took when they supported this law, which

15 is to discuss with us and with the Legislature additional

16 options to make it more flexible. That's the offer and the

17 challenge that I put out there.

18 I think that the point was a good one, that it's

19 hard for government to narrowly dictate how things should

20 happen and it probably usually doesn't work, but that the

21 responsible approach that they should take is to discuss

22 with us and with the Legislature what additional options

23 could make this thing work for them as well as meet the

24 responsibility that the people of California have demanded

25 of us of reducing waste going into the landfills by 50

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1 percent. I asked them to do their part.

2 And I support this motion to oppose this bill.

3 BOARD CHAIRMAN PENNINGTON: Yes, Mr. Frazee.

4 BOARD VICE CHAIRMAN FRAZEE: The question on this

5 bill is whether or not we should repeal -- or the main trust

6 of it, repeal the requirement that plastic containers have

7 recycled content.

8 And to believe that the significant investment

9 that's been made by the private sector in the use of

10 recycled plastics I don't think has been proven that that is

11 the result of the current law that requires recycled

12 content.

13 If you look at the major amounts of recycled

14 plastic that are being used, they're first in the CRV

15 program and number two in food products, specifically milk

16 and some of the others. So and those items are not affected

17 by a requirement for recycled content.

18 Another thing that causes me concern about the

19 current program is looking at the numbers that we've had in

20 our update reports on the number of companies that have

21 chosen to respond to the legislation for reporting. And I

22 think it's in the few hundreds out of several thousand that

23 are out there that are thumbing their nose at us and we have

24 no way of enforcing it, so we have sort of an unequal

25 enforcement that's not really doing the job.

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1 I think recycling of plastics is going to be
2 driven by the marketplace and that's what has caused this
3 significant investment.
4 And there's no need for us to continue to use
5 resources that could be utilized somewhere else in chasing
6 after something that is going to take care of itself in the
7 marketplace, because of the economics of it.
8 And I would support this legislation.

9 BOARD CHAIRMAN PENNINGTON: Any other comments?

10 We have some comments from the —

11 BOARD MEMBER RELIS: Mr. Chair, I'll hold my
12 comments until we hear the testimony.

13 BOARD CHAIRMAN PENNINGTON: Mr. Gene Livingston.

14 MR. LIVINGSTON: Mr. Chairman, members of the
15 Board, I'm Gene Livingston and I'm appearing here today on
16 behalf of two clients. The first is the Cosmetic, Toiletry
17 and Fragrance Association. The second is the Soap and
18 Detergent Association and their members.
19 And I want to emphasize that the situation and
20 problems for those two associations and their members really
21 differ.

22 But before getting into the particular situation
23 for those companies and for business, I'd like to emphasize
24 the point that I made when I appeared before the Legislative
25 Committee.

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1 And that is that I agree with Mr. Chesbro in terms
2 of the effort that this Board and the staff has made to
3 implement the law. I think that you did everything you
4 could to make this as rational a program as possible. I
5 think what has happened is that time has just demonstrated
6 that it's a bad law. Certainly no reflection on the work of
7 the Board or the staff in terms of the implementation.
8 I also agree with Mr. Frazee with respect to
9 what's happening in the marketplace and with respect to the
10 burdens that local government have under the 939 program.
11 What we're seeing nationally is that recycled
12 plastic commodities are traded now on the market just as
13 virgin materials are traded. And that has nothing to do,
14 it's not the consequence of this law, that's the consequence
15 of the fact that there is a resource out there that people
16 are getting it and reselling it and making money from it.
17 It's a natural economic consequence.
18 That phenomenon is occurring nationally and yet
19 when you look at the situation that we have here in
20 California there have been only two states who have
21 attempted what has been done here and that's Oregon and
22 California. And it's not that California and Oregon are
23 driving that national economy. That's happening because
24 there is a profit to be made out there.
25 The other phenomenon that is occurring is that our

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1 members are competing for people who buy green. Our members
2 are touting where they can use recycled material, the fact
3 that they're using recycling material. They're touting the
4 fact that they have downsized their packages. And they're
5 touting the fact that they have concentrated their products
6 and that they're now introducing less waste into the stream.
7 This is a competitive area and this is what's
8 driving the whole effort. In fact, the effort began long
9 before this bill was ever enacted here in California. It
10 began in the '80s with downsizing and that of course is
11 part of the problem that we're facing.

12 Our members downsized their containers in the
13 '80s, got them to as small and as thin as possible to still
14 be safe for shipping the products and for the consumers to
15 use it. They did it for economic reasons. They did it
16 because the less material they use in the containers the
17 less expense there is and because lighter containers are
18 cheaper to ship and so on. So there again were economic
19 reasons for all that to happen. But of course people who
20 downsized in the '80s get no credit for downsizing in the
21 '90s because the law says that the base year that you look
22 at is beginning in 1990.

23 Now, I mentioned that there's a difference between
24 my cosmetic member client and the Soap and Detergent
25 Association member clients. Let me talk just briefly about

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1 the cosmetics.

2 Cosmetics include personal care products, includes
3 shampoos, it includes mouthwashes, it includes baby
4 products. Those containers have to be just as pure as
5 possible so as not to expose consumers to contaminants in
6 those products.

7 Cosmetic manufacturers have exactly the same problem that
8 food producers have in assuring the safety and the
9 integrity of their products. We cannot use recycled content
10 in those containers and be assured that we're not
11 introducing contaminants, bacteria, harmful chemicals to
12 consumers and putting them at risk.

13 This law that we're seeking to repeal now was enacted in
14 1991, two years ago. We sought an exemption for food and
15 cosmetics. That law got changed and what came out was a
16 two-year extension for food and cosmetic. And what we're
17 convinced now more than ever now is that we cannot,
18 consistent with our obligation to consumers, use recycled
19 content. We have already downsized, source reduced as much
20 as we can. Food and cosmetics are not in a position to use
21 the refill process.

22 The only thing that's left is a statewide recycling
23 rate of 25 percent and we still don't know what that rate
24 is and that rate, even if we achieve 25 percent one year,
25 maybe 24 percent the next year, and manufacturers

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1 are constantly having to adjust or pay the \$100,000 penalty
2 if they're not in compliance.

3 So that's the problem that the cosmetic industry
4 is facing.

5 The Soap and Detergent Association is much
6 different. That industry, again before this law went into
7 effect and certainly since, but not because of it, but
8 because of the natural economic phenomenon is using
9 substantial recycled content. I have clients who are using
10 100 recycled content in their containers on cleaning
11 products. They don't have the same concerns about the
12 contaminants that food and cosmetic producers have.

13 But what has happened as a consequence of this
14 law, not that this law has driven that recycled content use,
15 but what they have to do now is they have to gather data for
16 every product that they have that is sold and packaged in a
17 plastic package and for each container size they had to
18 gather data about the supplier of that particular container
19 and whether that supplier produced that container with
20 recycled content.

21 At times suppliers will use recycled content,
22 sometimes they'll use virgin content, depending on the
23 marketplace.

24 But what they had to do was they had to gather the
25 data and then they had to calculate on a

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1 container-by-container basis what percent of that is
2 recycled and then they do a corporate averaging to try to
3 figure out whether they are in compliance or not and they
4 have to maintain this information in a database.
5 One company, one member of the Soap and Detergent
6 Association, has estimated that it's looking at \$150,000 a
7 year in just gathering and maintaining this information in
8 order to respond to this Board in the event that this Board
9 should ask whether it is in compliance with this law or not.
10 And as Mr. Frazee said, when you multiply that by
11 the thousands and thousands of people who are affected by
12 this law, it's just an enormous expense for what? Because
13 what Mr. Chesbro and all of us want to achieve is happening
14 naturally in the marketplace.
15 So I would urge you to reject the motion to oppose
16 this bill.
17 As I said to the committee, we'd like to have your
18 support. I don't expect that to happen, but certainly we
19 would like not to have your opposition as we move forward
20 with this bill.

21 Thank you.

22 BOARD CHAIRMAN PENNINGTON: Thank you.

23 Mr. Dan Colegrove.

24 MR. COLEGROVE: Mr. Chairman and members, I'm Dan
25 Colegrove, with the Grocery Manufacturers of America. I've

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1 also been asked to speak on behalf of the California League
2 of Food Processors.

3 Mr. Livingston did a more than adequate job of
4 describing our arguments in support of Senators Maddy and
5 Costa's bill.

6 I'd like to briefly touch on a few things and
7 speak to some things Mr. Chesbro was alluding to in his
8 remarks.

9 In 1991 when the original legislation was passed,
10 first of all my association did not support and the
11 California League of Food Processors did not support it. My
12 recollection is that most industry groups either weren't
13 aware of it or did not support it.

14 However, there were some industry groups in 1991
15 who felt that a 25 percent overall recycling rate by 1995
16 might be achievable.

17 Well, it's 1996 and we don't have that recycling
18 rate. I think it's very questionable whether it's going to
19 be in 25 percent or not. And it's got to be annual an rate.
20 It could be 25 percent, 26 percent this year and 24 percent
21 next year. In the meantime my member companies are on the
22 hook and are sitting and sweating and worrying if they're
23 going to meet this law or not.

24 In 1991 a lot of things were said, a lot of things
25 were taking place. The Legislature was full of good ideas

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1 about how to manage solid waste.

2 The other day in legislative committee Senator

3 Maddy said when he was presenting his bill that he would

4 like to be the first legislator to admit that they made a

5 mistake with this bill, that it was overly optimistic, and

6 in consideration of what it's doing to industry generally,

7 the hoops it's putting us through, he would like to repeal

8 it.

9 We are talking about one percent of the municipal

10 solid waste that's generated in the United States and in

11 California and a good portion of that number is then

12 recovered for recycling.

13 We are very aware and very proud of our record

14 with our packaging. We make the thinnest, strongest, safest

15 packaging we can and protect our products and we've doing

16 that for a long time, since a long time before this bill was

17 passed.

18 We would also ask you to oppose this motion to

19 oppose the bill. In recognition of a split in the Board we

20 would ask that you take no position and allow this issue to

21 be discussed in the Legislature and dealt with there.

22 Thank you.

23 BOARD VICE CHAIRMAN FRAZEE: Thank you.

24 Now is there anyone else to be heard on this item?

25 If not --

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1 BOARD MEMBER GOTCH: Mr. Frazee, I have a couple
2 questions.

3 BOARD VICE CHAIRMAN FRAZEE: Yes.

4 BOARD MEMBER GOTCH: For Mr. Colegrove and
5 Mr. Livingston and comments.

6 I'm wondering why you're asking us to repeal this
7 bill when the issues that you've raised are all issues that
8 we can work with you on? Why after five years are you
9 coming to us now and asking us to repeal a program that we
10 won't have the results on until next month?

11 MR. COLEGROVE: We've been out -- I've been out
12 here for four years on this issue time and time and time and
13 time again and have worked closely with the Board and the
14 staff, and frankly are happy with the relationship we've had
15 with the staff on this bill and the Board. I think they're
16 doing a good job with a very complicated idea. So we're not
17 coming out of the blue.

18 The legislation itself has been in place since
19 last year. As you recall in 1993 Senator Boatwright carried
20 legislation that pushed a portion of the bill back until
21 '97. We're going up on that day.

22 We didn't just decide to sneak a bill into print
23 to repeal the law. This issue has been coming for an awful
24 long time and anyone who says it's a surprise is mistaken or
25 is trying to be misleading. This is a real issue.

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Whether or not you propose to repeal the law was a

2 decision that was made after an awful lot of deliberation

3 privately amongst my companies and other associations and

4 companies.

5 We spent last year of course working on the

6 reports that were due to the Board in December, gathering

7 data, trying to learn more about the law, trying to decide

8 what we should propose in legislation in 1996.

9 And we thought about it and we decided that this

10 was just a bad law, there was no fixing it in our opinion,

11 it needs to be taken down, and once it's been repealed we'll

12 be happy to discuss with the Legislature and the Board other

13 alternatives.

14 But with this law in place there's no discussions

15 that are productive. It's just a hindrance. It's not a

16 new issue. It's been around for a long time.

17 BOARD MEMBER GOTCH: I've been here on the Waste

18 Board for approximately 16 months and you haven't come to

19 talk to me, so I'm not being misleading.

20 If food and cosmetics have a problem, then let's

21 perhaps work with them and get an additional two-year

22 waiver. I don't think it's time to repeal this bill.

23 BOARD MEMBER RELIS: Mr. Chair.

24 BOARD CHAIRMAN PENNINGTON: Mr. Relis.

25 BOARD MEMBER RELIS: I'm not going to be able to

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1 support the bill and I'd like to state why.

2 First, I think we, let's see, I think this was

3 passed shortly before I came on the Board, but the Board had

4 a support position for the bill and has heard this matter

5 several times over the years. In my view a deal was struck

6 and a deal is a deal.

7 We carefully worked out with industry how to

8 implement what is admittedly a complex law. We're deeply

9 now into the implementation.

10 And that's frankly where I think the issues

11 continue to be. We've filled in, I think, as much

12 flexibility as we know how to do at this stage.

13 We need loans in part and we've heard testimony to

14 this effect before the committees and Board that people have

15 invested, both parties that have received loans from this

16 Board and others, on the assumption that this law is being

17 implemented.

18 Cities certainly have invested in plastics

19 recovery in the past because of this law and other statutes.

20 I think they expect us to continue our efforts at

21 market development.

22 And frankly plastics remain a difficult challenge

23 for all of us here in California.

24 I guess fundamentally though my biggest problem

25 with the law is that there's no alternative proposed and

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1 that I feel after years of discussion a simple proposal to
2 repeal, without an attempt to strike a way of implementing
3 if it satisfies the concerns that have been raised is too
4 blunt an approach at this stage. So that's why I'm not
5 going to be able to support it.

6 BOARD MEMBER CHESBRO: Mr. Chairman.

7 BOARD CHAIRMAN PENNINGTON: Yes.

8 BOARD MEMBER CHESBRO: I'd like to respond to a
9 couple things that have been said.

10 One is that the statement that it's one percent of
11 the waste stream. Well, I would like to point out that
12 that's, I presume, one percent by weight, which of course
13 for practical reasons is the way much of 939 is implemented
14 in terms of measuring reductions in disposal, but plastic,
15 both due to its unique properties and also the fact of how
16 waste actually settles into a landfill, clearly the question
17 of volume is one that has to be considered.

18 And I want to point out that it's one of the
19 fastest growing packaging categories.

20 In addition to that if you take any portion of the
21 waste stream, including paper, and break it down by its
22 grades, you get down to tiny tiny percentages. So the
23 entire waste stream is made up of tiny percentages. We talk
24 about C and D as a huge category or yard waste, well, these
25 are all broken down into small subcomponents and 50 percent

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1 is going to be achieved by a series of one and two and five
2 and 10 percent actions. So I think that is very important
3 to point out.

4 Then the other thing is that the question of
5 whether or not recycled content can be used in food and
6 cosmetics packaging. There are companies in this state, in
7 this country who have applied to the federal government for
8 specific approval by the FDA for the use of recycled content
9 in food packaging and have been approved. So that is a
10 doable process, it's not one that's not available to private
11 companies. And the public health and safety gets protected
12 in the process.

13 BOARD CHAIRMAN PENNINGTON: Okay. Any other
14 comments?

15 BOARD VICE CHAIRMAN FRAZEE: Yes. If I can just
16 wind up also, Mr. Chairman.

17 The question was raised about the cost, of our
18 cost for administering this program and I don't believe
19 that's the question. The question is what is the cost of
20 compliance to the private sector. And I think everyone will
21 have to admit that's a hundred times or a thousand times or
22 10,000 times more than what we spend on administration of
23 this program. And is that cost to the public really worth
24 the kind of money that they're putting into compliance on
25 this or could that money be better spent towards getting

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1 these items recycled?

2 And I think that's what's happening.

3 Again, I want to emphasize that I don't think that

4 the excellent effort that's being made now in recycled

5 plastics is being driven by a minimum content law. It's

6 driven by the economics of utilizing a product that's fairly

7 easy to recycle.

8 I think our own costs, and if we have cost and we

9 could avoid those, could be better spent in the development

10 of markets in helping people with the recycling side of the

11 equation, rather than being spent in the enforcement side.

12 I think that's what this Board is all about and what our

13 charge in the legislation is not only to regulate, but also

14 to aid in the developing of producing markets and seeing if

15 these products get used and I think we can spend our money a

16 lot better there.

17 I again would support the legislation.

18 BOARD MEMBER GOTCH: One more little point.

19 And that's just that I want us to remember also

20 the folks that have invested in recycling of plastics and

21 there's been over millions of dollars invested in this

22 industry in the business.

23 BOARD CHAIRMAN PENNINGTON: Okay. I think we're

24 ready to vote.

25 Ms. Gotch, I believe you have a motion.

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1 BOARD MEMBER GOTCH: I believe Mr. Chesbro

2 seconded that. We made the motion.

3 BOARD CHAIRMAN PENNINGTON: I just thought that

4 maybe you'd repeat it.

5 BOARD MEMBER GOTCH: I move that we oppose this

6 measure.

7 BOARD CHAIRMAN PENNINGTON: Okay. Would the

8 secretary call the roll, please.

9 BOARD SECRETARY KELLY: Board Member Chesbro.

10 BOARD MEMBER CHESBRO: Aye.

11 BOARD SECRETARY KELLY: Frazee.

12 BOARD VICE CHAIRMAN FRAZEE: No.

13 BOARD SECRETARY KELLY: Gotch.

14 BOARD MEMBER GOTCH: Aye.

15 BOARD SECRETARY KELLY: Relis.

16 BOARD MEMBER RELIS: Aye.

17 BOARD SECRETARY KELLY: Chairman Pennington.

18 BOARD CHAIRMAN PENNINGTON: No.

19 Okay. Moving on to --

20 BOARD VICE CHAIRMAN FRAZEE: Announce the results

21 of that vote, Mr. Chairman.

22 BOARD CHAIRMAN PENNINGTON: It's 3 to 2.

23 BOARD VICE CHAIRMAN FRAZEE: But is not the result

24 of that that we take no action on this item?

25 BOARD CHAIRMAN PENNINGTON: Yes. Yes. You're

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1 correct.

2 BOARD VICE CHAIRMAN FRAZEE: I just want to make

3 that clear for the public.

4 MS. ZWARTS: It means we have no position.

5 Requires four votes for a position.

6 BOARD CHAIRMAN PENNINGTON: Correct.

7 Item 6-I, consideration of State legislation, SB

8 1535, Killea.

9 MS. ZWARTS: Senator Killea, indeed. This bill

10 would extend the sunset date of the Recycling Market

11 Development Loan program for ten years.

12 This bill is presently in Senate Appropriations

13 Committee and the committee recommendation is that we

14 support this measure, but report back to the Board on some

15 technical matters that staff are working on for amendments.

16 For the Board's information, staff are still

17 working on those amendments. We have not come to any

18 resolve on them in time to present to the Board at this

19 time.

20 Some of the general issues we're discussing are

21 the interest rate and how we repay our loan to the

22 Integrated Waste Management Account.

23 And also some issues of if the Board should expend

24 less than \$5 million annually in appropriating money from

25 the IWMA to the loans and various other provisions.

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1 It is staff's recommendation that perhaps the
2 Board wishes to consider it support of this measure and let
3 staff report back to the LPEC at a later date, perhaps next
4 month, with the amendments to have the Board consider those
5 at that time.

6 BOARD CHAIRMAN PENNINGTON: Okay. Is there any
7 comments on this?

8 Mrs. Gotch?

9 BOARD MEMBER GOTCH: No. I don't have any
10 additional comments.

11 I had brought up the amending the CalCAP
12 provision.

13 MS. ZWARTS: Yes.

14 BOARD MEMBER GOTCH: But I would like to move that
15 we support. And as Patty had said, bring it back to
16 committee with the results.

17 BOARD MEMBER RELIS: Second.

18 BOARD CHAIRMAN PENNINGTON: Okay. Mr. Relis
19 seconds.

20 Any other comments?

21 If not, will the secretary call the roll, please.

22 BOARD SECRETARY KELLY: Board Member Chesbro.

23 BOARD MEMBER CHESBRO: Aye.

24 BOARD SECRETARY KELLY: Frazee.

25 BOARD VICE CHAIRMAN FRAZEE: Aye.

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1 BOARD SECRETARY KELLY: Gotch.

2 BOARD MEMBER GOTCH: Aye.

3 BOARD SECRETARY KELLY: Relis.

4 BOARD MEMBER RELIS: Aye.

5 BOARD SECRETARY KELLY: Chairman Pennington.

6 BOARD CHAIRMAN PENNINGTON: Aye.

7 And the ayes have it.

8 Mrs. Gotch.

9 BOARD MEMBER GOTCH: Thank you, Mr. Chair.

10 I had mentioned earlier that I'd like us to move

11 until later the Ackerman bill, which was the house cleanup

12 bill, our cleanup bill. What I'm going suggest right now is

13 that we move that bill instead back to committee, if that's

14 all right with the other Board members.

15 BOARD CHAIRMAN PENNINGTON: Okay. Does any Board

16 member have an objection to that?

17 MS. ZWARTS: As a technical comment, the Board may

18 wish to consider, since this is Board-own sponsored bill,

19 and it is set for hearing in two weeks, that it may be

20 awkward for us not to support our own bill, to perhaps,

21 since the bill and some of the amendments I think are

22 appropriate, that the committee found appropriate, to let

23 some of those go and revisit those that we have issue with.

24 BOARD CHAIRMAN PENNINGTON: Well, I certainly

25 agree that it's embarrassing if we don't support our own

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1 bill.

2 How would you like to proceed on this?

3 BOARD MEMBER GOTCH: That sounds good to me.

4 BOARD CHAIRMAN PENNINGTON: Okay.

5 BOARD MEMBER GOTCH: So we would need to take a

6 vote on that, though.

7 BOARD CHAIRMAN PENNINGTON: Right.

8 BOARD MEMBER GOTCH: A vote in support.

9 MS. ZWARTS: Perhaps we --

10 BOARD MEMBER RELIS: Would you repeat what we are

11 proposing to do?

12 MS. ZWARTS: Perhaps I can help the Board a little

13 bit.

14 The Board support the bill and the proposed

15 amendments except for Amendment No. 1 and the additional

16 amendment that Member Gotch raised regarding the used oil

17 program. And those two amendments to be brought back to

18 committee next month to be revisited.

19 BOARD MEMBER GOTCH: Is that all right? Would you

20 like me to repeat the amendment that I had, since I had not

21 repeated that today? It might be good -- it would be in

22 addition to the suggested amendments, I'd like to make a

23 motion of support with an added amendment to authorize the

24 Board to establish a minimum grant level for used oil

25 grants.

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1 BOARD MEMBER CHESBRO: I'll second.

2 BOARD CHAIRMAN PENNINGTON: Okay. So our motion

3 will be that we support the bill with the exception of

4 Amendment No. 1 and ask that used oil grants considered be

5 part of that bill. Correct?

6 BOARD MEMBER GOTCH: Correct.

7 BOARD CHAIRMAN PENNINGTON: Okay. You all ready.

8 Okay.

9 Secretary call the roll.

10 BOARD SECRETARY KELLY: Board Member Chesbro.

11 BOARD MEMBER CHESBRO: Aye.

12 BOARD SECRETARY KELLY: Frazee.

13 BOARD VICE CHAIRMAN FRAZEE: Aye.

14 BOARD SECRETARY KELLY: Gotch.

15 BOARD MEMBER GOTCH: Aye.

16 BOARD SECRETARY KELLY: Relis.

17 BOARD MEMBER RELIS: Aye.

18 BOARD SECRETARY KELLY: Chairman Pennington.

19 BOARD CHAIRMAN PENNINGTON: Aye.

20 Now we're going to -- the ayes have it and it will

21 be ordered that way.

22 Now we move to Item 18, consideration of staff

23 recommendations on the enforcement options available to the

24 Board with regard to jurisdictions that have failed to

25 submit a SRRE or recycling element and Nondisposal Facility

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1 Element.

2 Judy Friedman.

3 MS. FRIEDMAN: Good morning, Chairman Pennington

4 and Board members.

5 By statute all jurisdictions, with the exception

6 of newly incorporated cities, should currently have

7 submitted their final SRRE and NDFE to the Board.

8 On February 15th the Local Assistance and Planning

9 Committee heard a status report on the jurisdictions which

10 had not submitted final SRREs and NDFEs to the Board.

11 The committee directed staff to present options to

12 the Board regarding those jurisdictions at the March

13 committee meeting.

14 The Board also sent a letter to each noncomplying

15 jurisdiction on March 1st.

16 The item was heard this month at committee and

17 staff's recommendations for a stepwise approach to

18 compliance was approved unanimously.

19 With that I'd like to turn the presentation over

20 to Lorraine Van Kekerix, with the Office of Local

21 Assistance, and Elliot Block, with the legal office.

22 BOARD CHAIRMAN PENNINGTON: Thank you.

23 MR. BLOCK: Very briefly all I'm going to do is

24 provide some framework and context for the options that have

25 been presented in the item.

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1 In terms of statute the only reference to
2 enforcement regarding adequacy of the plans is in Public
3 Resource 41813, part of which is on the monitors. And I
4 realize that's a little bit small, so let me just put a
5 different overhead which is a little bit easier to read.
6 And basically there's certain provisions under
7 41813, authorizes the Board to impose fines, require that
8 that be done after a public hearing and requires that
9 several determinations be made in the process of deciding
10 whether to do so.
11 Of the options that are in the agenda item before
12 you, Option 5 is only one that -- Option 5 is the one that
13 reflects the statute.
14 The other options in the stepwise program that's
15 been presented by staff are an attempt to fill in the
16 procedure, if you will, because statute is basically sort of
17 a skeleton there.
18 And as will be discussed in more detail, the idea
19 is twofold.
20 Number one, through that process hopefully avoids
21 as many, if not all, hearings for enforcement as possible,
22 if we can get compliance from jurisdictions.
23 And to the extent that the Board still does have
24 to have a public hearing through that process, information
25 will be gathered to enable any hearings that might have to

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1 take place to be done in a little bit more efficient manner.

2 With that, I'll turn it back to Lorraine.

3 MS. VAN KEKERIX: Good morning, Board members.

4 The stepwise set of options that the staff is

5 recommending to the Board has started off with working on

6 establishing the record through the staff sending letters

7 and then the Board sending a letter on March 1st and

8 informing the jurisdictions of the status of their

9 documents.

10 We have had a number of responses from

11 jurisdictions, many of which have come through to the Board

12 offices.

13 I would like to report to you that there are five

14 jurisdictions who have dropped off the list entirely. They

15 have submitted their documents and they are no longer on the

16 list. And I can give you the specifics if you'd like that.

17 And other jurisdictions are working closely with

18 staff and we'll be submitting their documents in the near

19 future.

20 The stepwise approach that staff is recommending

21 goes through five steps and we have then two additional

22 recommendations for the Board. And I will go over each of

23 the recommendations briefly. There are issues associated

24 with each one and I will answer questions on those issues if

25 you have them.

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1 The first step the staff proposes is that the
2 Board send a follow-up letter to the March 1st letter to
3 each noncomplying jurisdiction to inform the jurisdiction of
4 the Board's action on this agenda item, to request
5 participation of the jurisdiction in developing a compliance
6 schedule, and to request the jurisdictions identify any
7 types of assistance that they may need in submitting their
8 Source Reduction Recycling Element and Nondisposal Facility
9 Element.

10 The second step that staff would propose is that
11 we prepare agenda items for each of the noncomplying
12 jurisdictions that contains a compliance schedule and that
13 we bring those forward to the Board for approval.

14 The third step that we propose is that staff be
15 directed to prepare an agenda item on generic types of
16 reasons for failing to submit elements and possible Board
17 actions, either administrative actions or penalty actions,
18 which are consistent with the Board's adopted County
19 Integrated Waste Management Plan enforcement policy for
20 Board consideration in any future actions.

21 The fourth step that we recommend is that the
22 Board hold regional hearings in or near any affected
23 jurisdictions on noncompliance with submitting their Source
24 Reduction Recycling Elements and Nondisposal Facility
25 Elements so that the Board can consider issuing an order of

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1 compliance including a compliance schedule and directing
2 staff to take any additional actions.

3 The fifth step that the Board staff proposes is
4 that if all the previous actions do not result in submittal
5 of documents that the Board hold regional Board-sponsored
6 hearings to notify jurisdictions of noncompliance with the
7 Integrated Waste Management Act and consider enforcement
8 action that's consistent with the Board-adopted policies,
9 the existing and the proposed policy that we would come
10 forward with in step No. 3, and the Public Resources Code.

11 Those Board actions could range from setting a
12 compliance date with measurable milestones to levying the
13 fines for failing to submit.

14 So there's a wide range of potential actions.

15 That is that stepwise approach that staff is
16 recommending.

17 We also have two other recommendations.

18 The first of the other recommendations is that the
19 Board direct staff in all division and the legal office to
20 examine whether the Board should restrict the issuance of
21 Board grants and loans to jurisdictions which have approved
22 Source Reduction Recycling Elements and Nondisposal Facility
23 Elements.

24 And our last recommendation is that the staff
25 continue to prepare status reports on the status of document

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1 submittal, which are presented at the committee meetings and
2 which the committee then reports on to the Board meeting.

3 So the staff recommendation is that the Board
4 adopt a stepwise compliance program, starting with Option 1,
5 the letter from the Board with the action they take today
6 and the request for identifying compliance schedules and
7 assistance.

8 Two, Item No. 5, the hearings for penalties.

9 We'd like to also say that whenever a jurisdiction
10 does submit the documents staff will follow its standard
11 procedures of working closely with the jurisdiction to
12 assist the jurisdiction in coming into compliance, which is
13 what's happened up to this point in time.

14 We know that there are some jurisdiction members
15 in the audience who would like to address you today.

16 I would say that we have had a lot of response
17 based on the March 1st letter.

18 And again a lot of jurisdictions are working very
19 closely with us to get their documents in.

20 That concludes my presentation.

21 BOARD CHAIRMAN PENNINGTON: Okay. Thank you.

22 Mr. Chesbro.

23 BOARD MEMBER CHESBRO: Yes. Mr. Chairman, as
24 Chair of the committee I'd like to make a couple comments
25 before we hear from whatever jurisdictions are here.

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1 As you know from the beginning we have taken a
2 compliance and assistance approach to implementing the local
3 planning document and the local diversion programs and I
4 think that has directly resulted along with the proactive
5 and positive actions by local governments in the Board
6 having approved 343 SRREs. And I don't know whether that
7 number that was given includes the ones we approved today,
8 but it's at least in the ballpark of the right number.
9 And we have an approval rate of about 98 percent.
10 I'd like to point out that those are in the
11 approval category or submittal category and those that
12 aren't don't follow any pattern. We have large and small,
13 rural and urban, well-off and less well-off jurisdictions in
14 each category. So it's not as though we have all rurals who
15 haven't submitted or all urbans who have or anything like
16 that.
17 But we have, I guess, as of today, about 30
18 jurisdictions that are still in the category of not
19 submitting. Is that about approximately a correct number?
20 MS. VAN KEKERIX: We have closer to 60. When we
21 look at —
22 BOARD MEMBER CHESBRO: I was referring to SRREs
23 probably.
24 MS. VAN KEKERIX: Okay.
25 BOARD MEMBER CHESBRO: Because I have 35 at the

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1 committee, I think is the ones that you said and you said
2 that five have come in since the committee meeting.

3 MS. VAN KEKERIX: Right. We had about 40 at the
4 committee meeting so we're now at about --

5 BOARD MEMBER CHESBRO: Well, whatever the number
6 is, it's a small number.

7 These jurisdictions have received at least two
8 letters from staff, and most recently Chairman Pennington
9 and I signed a letter that was sent to either the board of
10 supervisor's chair or the mayor of each jurisdiction that
11 had not submitted inquiring why the documents were late and
12 what the time frame was for the local jurisdiction for
13 submittal. That was at the request of other committee
14 members at a committee meeting.

15 As I have traveled around the state I've begun to
16 hear from jurisdictions who are in compliance who are asking
17 why we have not begun to take steps to deal with
18 jurisdictions who are not in compliance.

19 Hopefully, we won't need these steps that are in
20 this proposal and we won't have to implement them. We will
21 continue to see voluntary compliance.

22 My hope is that those jurisdictions that are late
23 will agree to compliance schedules and submit their SRREs
24 and NDFEs to us. And, as staff has indicated, in the last
25 few weeks we have heard from a number of those jurisdictions

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1 that are on the agenda today, with very few exceptions that
2 the responses have been. positive and forthcoming and wanting
3 to dialogue with the Board and the Board staff about how we
4 can arrive at a common process for bringing those SRREs in.

5 The Board's goals here should be compliance and
6 not enforcement or penalties.

7 And any jurisdiction that's willing to begin
8 working with us I think we should offer assistance to.

9 So that's, I think, consistent with what we've
10 done historically.

12. However, that being said that now over 85 percent
12 of the jurisdictions have submitted their planning documents
13 it is time for the Board to get serious about what we're
14 going to do with the remaining group that is not in
15 compliance and therefore the committee did approve the staff
16 recommendation.

17 And as staff indicated, several of the
18 jurisdictions are here today and so I would of course look
19 forward to hearing what they have o say.

20 We did hear from several of them at the committee,
21 who raised some concerns.

22 And as can be predicted there's been some
23 communication problems and glitches in terms of
24 understanding of who, when and what document was submitted
25 when.

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2. So this list is not indicating to be like a black
2 mark against the jurisdictions. I think clearly we are just
3 trying to move this process along and work with locals to
4 bring this, bring the planning part of the step to a
5 conclusion so we can focus fully on assistance and
6 implementation.

7 BOARD MEMBER RELIS: Mr. Chair.

8 BOARD CHAIRMAN PENNINGTON: Yes.

9 BOARD MEMBER RELIS: Before we go into testimony I
10 have a couple of clarifications.

11 What type of time frame do you see this step
12 process taking? Are there formal notifications and delivery
13 dates and all of that? Do you have any idea how long would
14 it go from 2. to 5?

15 MS. VAN KEKERIX: There's going to be a real range
16 of time frames. I think you'll hear from a couple of
17 jurisdictions that they plan to get their documents in next
18 week. We have others that we know that it's going to take
19 them several months to do. There re a number of them that
20 have more kinds of issues with establishing a base year,
21 which takes a little longer in terms of times.

22 So I think that a number of them are going to be
23 dropping of f and it will probably be several months before
24 we would have compliance from all of the jurisdictions. So
25 I don't see this happening immediately, but it is going to

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1 be a range of time frames.

2 BOARD MEMBER RELIS: And one other question. In

3 the briefing I mentioned this, expressed some concerns about

4 holding regional hearings and what would be involved in

5 that, because I know that our resources are limited and

6 we've done a few regional meetings on permit and enforcement

7 matters. What do you have in mind here?

8 MS. FRIEDMAN: In terms of regional hearings if

9 you look at the statute in terms of the Board's enforcement,

10 there's two statutory provisions that deal with it, and the

11 one we're dealing with here is on plan adequacy.

12 The item, the statutory provision on plan

13 implementation requires them to be regional hearings,

14 although it doesn't require it for plan adequacy to be

15 consistent with the proceedings that are identified in

16 statute for plan implementation. Staff is recommending a

17 regional hearing.

18 In terms of who holds the hearing, this question

19 was also raised in committee and it could be a committee

20 hearing with an ultimate Board ratification of the committee

21 actions. So there is some flexibility with regard to that

22 as well.

23 But basically staff is recommending this to

24 provide that opportunity for the jurisdiction to address the

25 Board without incurring their expenses as well.

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1 MS. VAN KEKERIX: There are a number of
2 jurisdictions that have indicated that one of the reasons
3 they're late with their documents is insufficient funding.
4 So if the hearings are all held here in Sacramento they may
5 not be able to come and present their case, because they
6 don't have funds for completing their documents or travel.
7 BOARD CHAIRMAN PENNINGTON: Okay. We have one
8 person who has put in a request to speak. It's Mr. Gordon
9 Beers.

10 MR. BEERS: Good morning. Thank you, Chairman
11 Pennington and members of the Board. My name is Gordon
12 Beers. I'm the president of Palo Verde Disposal Service.
13 I'm the franchise hauler for the City of Blythe.
14 And next to me is Mr. Jim Rodkey, who is the
15 assistant public works director, representing the City of
16 Blythe.

17 The reason we're here today of course is because
18 of the letter dated March the 1st.
19 We were somewhat surprised in the fact that we had
20 always felt we had been working closely with the staff and
21 it's been a very good relationship. We have been in
22 constant communication with them.
23 And briefly, looking backwards, we submitted our
24 SRRE on October the 8th of 1994, and followed up with
25 subsequent documentation throughout the following months.

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1 In January of 1995 we formally withdrew our SRRE
2 due to some pending large annexations and rapid growth.
3 And additionally we were having some difficulty in
4 obtaining waste characterization information on the prison
5 system, since we have two large institutions in our city.
6 We had an opportunity to meet before the Board
7 meeting with members of the staff and get the real thrust
8 behind the letter and we feel comfortable with what we were
9 given as far as the reasons and how the letter came about.
10 And that we are within weeks, a week or two, of
11 formally submitting our final SRRE.

12 We have met our 25 percent diversion rate.
13 And we feel that have always had a good
14 opportunity and a good relationship with the staff members
15 and would like to continue that and that we feel that the
16 City of Blythe should be dropping off one of these lists
17 soon.

18 Thank you very much.

19 BOARD CHAIRMAN PENNINGTOI'1: Any questions of
20 Mr. Beers?

21 Thank you for coming all the way up here. And I'm
22 glad to hear that you and the staff were able to work things
23 out.

24 I guess we're ready for — any other discussion on
25 this?

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1 I think we're ready for a motion.

2 BOARD MEMBER CHESBRO: I'll make the motion to

3 approve staff recommendation, but in the process I also want

4 to say I think it's recommendation No. 6, which we said we

5 asked staff to take a look at, I want to point out that

6 we're not anywhere near the point of saying that that's

7 going to be implemented. That's simply to continue in

8 discussion about it, so I want to be very clear about that.

9 BOARD CHAIRMAN PENNINGTON: Right.

10 BOARD MEMBER CHESBRO: With that understanding I'm

11 going to go ahead and move the staff recommendation.

12 BOARD CHAIRMAN PENNINGTON: Okay.

13 BOARD MEMBER CHESBRO: Committee-approved staff

14 recommendation.

15 BOARD VICE CHAIRMAN FRAZEE: I'll second.

16 But I do have a question.

17 BOARD CHAIRMAN PENNINGTON: Sure.

18 BOARD VICE CHAIRMAN FRAZEE: The Item 6 that

19 Mr. Chesbro referred to, the restriction of grants and loans

20 to jurisdictions, my notes indicated from the committee

21 meeting that in order to implement that, that would require

22 the adoption of regulations. Was that -- so it's not one

23 that we could out of hand --

24 BOARD MEMBER CHESBRO: No.

25 BOARD VICE CHAIRMAN FRAZEE: -- utilize. It would

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1 take quite some time to move through that process to do that

2 although it's not an altogether bad idea.

3 There are a couple of other parallels to this

4 situation in other parts of mandated planning elements that

5 I'm familiar with and had some experience with.

6 In the Coastal Act there is a provision where

7 local jurisdictions that fail to provide the plans that the

8 State steps in and does the planning for them. And I don't

9 know if we have that kind of option. Of course that

10 obligation then is we pay for it also.

11 But in the case of some of these very small

12 jurisdictions that are concentrated in a single county,

13 there might be some potential for the Board to engage in a

14 consultant and work with them and where you can utilize one

15 consultant to do several of these very small jurisdictions

16 and it might be a savings all the way around to at least be

17 a facilitator for that particular effort.

18 The other parallel is in the case of airport land

19 use elements. And to this date after some 15 years there

20 are a number of those that have never been adopted and never

21 been submitted. And I think the most obvious one is the

22 County of Los Angeles. And they routinely have been able to

23 get legislation passed giving them another year or another

24 two years.

25 And so I think we're going to end up with a better

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1 track record than a couple of the others. It looks like

2 we're getting pretty close.

3 I think it might be worthwhile to kind of get an

4 update on this list of people that we haven't heard from at

5 all, because this list, a number of these people responded

6 to the letter from the Chairman and Mr. Chesbro, to separate

7 those out and see how many there are left that just have in

8 effect thumbed their nose at us and said we're not going to

9 respond. I think that gets down pretty small.

10 MS. VAN KEKERIX: I can count the number of

11 responses we've received if you'd like to know. I hadn't

12 done that before the meeting started.

13 BOARD VICE CHAIRMAN FRAZEE: But the list is

14 somewhat narrowed from what we have in the packet?

15 MS. VAN KEKERIX: Right. We have either received

16 a letter or a phone call from most everyone who is on the

17 list here.

18 My estimate is that we're up into the 50s on the

19 jurisdictions, just estimating the number on the first page

20 and multiplying it times the four pages that I have.

21 BOARD VICE CHAIRMAN FRAZEE: So we're getting

22 close.

23 MS. VAN KEKERIX: We're getting close.

24 BOARD MEMBER CHESBRO: Mr. Chairman.

25 BOARD CHAIRMAN PENNINGTON: Yes, Mr. Chesbro.

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1 BOARD MEMBER CHESBRO: It's ironic that we focus and have a
2 discussion on the very very small gap we have here in terms
3 of completing this process when I think, as Mr. Frazee has
4 pointed out, that these other State planning processes have
5 fallen far short of the achievement that our Board staff
6 and the local governments and the Board working together
7 have pulled out. I think it's real important all throughout
8 to repeat it over and over again, say look what has been
9 accomplished by all the players and partners in this
10 process

11 So the Coastal Act, and like Mr. Frazee, not in the same
12 way, but I've been involved in it over the years too, and
13 it's done a lot of good things, but they never were able to
14 achieve nearly in the time frame that we have the level of
15 local planning compliance. So it's very exciting, very
16 positive

17 BOARD CHAIRMAN PENNINGTON: I think we're ready
18 for a vote. We're ready

19 BOARD SECRETARY KELLY: Board Member Chesbro

20 BOARD MEMBER CHESBRO: Aye

21 BOARD SECRETARY KELLY: Frazee.

22 BOARD VICE CHAIRMAN FRAZEE: Aye.

23 BOARD SECRETARY KELLY: Gotch.

24 BOARD MEMBER GOTCH: Aye.

25 BOARD SECRETARY KELLY: Relis.

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1 BOARD MEMBER RELIS: Aye.

2 BOARD SECRETARY KELLY: Chairman Pennington.

3 BOARD CHAIRMAN PENNINGTON: Aye.

4 Motion carries.

5 Go to Item No. 19, consideration of options for

6 granting petitions for recycling after Board approval of

7 Source Reduction Recycling Elements.

8 Judy Friedman.

9 MS. FRIEDMAN: Good morning again, Chairman

10 Pennington and Board members.

11 This item deals with the issue of how the Board

12 should handle requests for retroactive reductions in the

13 short term or 1995 diversion requirements that are submitted

14 after the Board has approved a jurisdiction's Source

15 Reduction and Recycling Element and after 1995 has already

16 passed.

17 Staff are proposing and the committee has approved

18 a mechanism to streamline the process and reduce paperwork

19 for rural jurisdictions.

20 This item was unanimously approved in committee

21 and forwarded to the Board for consideration.

22 With that, I'd like to introduce Toni Terhaar,

23 section manager of the Central Section of the Office of

24 Local Assistance, who will make the presentation for staff.

25 MS. TERHAAR: Good morning, Board members.

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1 Item 19 is consideration of options for granting

2 petitions for reductions after the Board has approved Source

3 Reduction and Recycling Elements.

4 1995 goal year reductions have been granted to

5 seven rural counties and 16 rural cities.

6 Since then, two petitions have been received by

7 rural jurisdictions who have had their SRREs approved by the

8 Board. These two SRREs were approved based upon substantial

9 evidence in the record.

10 The issue at hand is whether to grant 1995 goal

11 year reductions after the 1995 goal year has passed to those

12 jurisdictions who have Board-approved SRRE5.

13 At the committee's direction in January staff

14 surveyed the 186 rural jurisdictions, as well as the League

15 of California Cities, the County Supervisors Association of

16 California, the Regional Council of Rural Counties and the

17 California Refuse Removal Council.

18 Evan Edgar, of CRRC, was the only person to

19 respond to the survey.

20 In your agenda packet on page 125 staff have

21 outlined four options for the Board's consideration. Staff

22 are recommending Options 3 and 4.

23 Option 3 is to deny a petition for reduction in

24 the 1995 goal year. As we know, 1995 is over and

25 jurisdictions cannot modify diversion programs they have

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1 planned to implement.

2 There is a less costly way than preparing a

3 petition for a jurisdiction to provide information if the

4 Board needed to determine a jurisdiction's good faith effort

5 in implementing its SRRE. And the less costly way is for

6 the use of the annual report.

7 If a jurisdiction discovers in 1996 that they do

8 not achieve the 25 percent reduction, staff would use the

9 annual reports and during its biannual review investigate to

10 what extent and the reasons why a jurisdiction did not meet

11 the diversion goals. Jurisdictions are already required to

12 submit an annual report containing this information.

13 Staff would then follow Board's adopted criteria

14 in the CIWMP enforcement report in determining a

15 jurisdiction's reasons for not meeting the goals.

16 In that report there are also additional

17 considerations and criteria in determining implementation

18 issues for rural jurisdictions.

19 And I raise this in particular because this was

20 Evan Edgar's concern at the March committee meeting and

21 staff consulted with him and we do believe we have addressed

22 his concern to his satisfaction.

23 Option 4 is the issuance of a two-year extension

24 in meeting the 25 percent diversion mandate. Option 4 is

25 also allowed by statute.

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1 A two-year extension to meet the diversion
2 requirements is allowed for rural jurisdictions if the
3 specific conditions are met such as adverse market
4 conditions or adverse economic conditions that prevent the
5 meeting of the diversion mandates.

6 There are no statutory restrictions on when the
7 Board may grant a petition for reduction to any qualified
8 jurisdiction.

9 However, if a petition is submitted after a SRRE
10 has been approved by the Board and after 1995, the
11 jurisdiction is still required to meet criteria by
12 presenting substantial evidence in the record for the Board
13 to consider.

14 And in a petition for reduction a jurisdiction
15 will need to justify why it could not meet the 25 percent
16 diversion mandate.

17 The petition would have to identify the new waste
18 projection numbers and the petition would need to identify
19 new diversion programs that would have to be implemented to
20 achieve the new projections and the reduced diversion
21 mandate.

22 The additional costs involved in preparing a
23 petition may further impact the available resources a
24 jurisdiction has to implement the SRRE.

25 As a final side note, I would like to mention that

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1 this item is just for 1995 goal year. This item does not
2 affect any petition for reduction that a jurisdiction may
3 submit to the Board for a reduction in the year 2000 goal.
4 This concludes my presentation and I'd be happy to
5 answer any questions you might have.

6 BOARD CHAIRMAN PENNINGTON: Yes, Mr. Chesbro.

7 BOARD MEMBER CHESBRO: Yes, Mr. Chairman, I think
8 I can speak for the committee, correct me if any of the
9 committee members think I'm off base, but there are several
10 things that I think we had in mind when we approved the
11 staff's recommendation.

12 One of them is that there's sort of a gap of logic
13 that you would essentially revise a plan for what you were
14 going to do in 1995 when 1995 is passed. So it's like
15 planning for past history. That's one consideration.

16 The second is there's still an argument to be made
17 that there might have been some difficulty that the local
18 jurisdiction faced that needs to be brought to the Board's
19 attention. And instead of having separate process for the
20 petition for reduction for 1995, I think really this can be
21 viewed as consolidating that process into their reporting
22 requirement, but I think the question from the committee
23 members clearly indicated, we got indications from staff
24 that the criteria would be used in looking at questions of
25 compliance would give the jurisdiction the ability to make

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1 the same case as would have been made to get the reduction
2 in requirements as to why they had difficulty achieving 25
3 percent in 1995.

4 And so I think there's a feeling that there was no
5 loss of rights, if you will, on the part of jurisdictions,
6 these jurisdictions, while at the same time there was
7 potential efficiency that could be achieved both for us and
8 the local jurisdictions.

9 As Toni, Ms. Terhaar, just pointed out, the
10 reduction petitions will still be allowed for the year 2000,
12. 50 percent requirement, and for the reduction in planning
12 process or planning requirements. So two-thirds of the
13 allowance, if you will, to those specified jurisdictions
14 continues to exist.

15 Also we did hold it over for a month to see if
16 somehow the local government representatives of the specific
17 jurisdictions who have an interest in this might not have
18 heard about and it, and they were all surveyed and with one
19 exception that doesn't actually represent local government
20 directly, the local governments themselves seemed to be fine
21 with it. We haven't really gotten a lot of negative
22 feedback.

23 So there was one question that was asked at the
24 committee having to do with whether or not what exactly this
25 would apply to, whether it would apply to all SRREs or only

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1 those that have been previously submitted and whether or not
2 by only considering those that had been previously submitted
3 we might be -- having this apply to them, we might in
4 essence be dinging one group of jurisdictions and not
5 another.

6 So can staff respond to that?

7 MS. TERHAAR: The agenda item today is for
8 consideration on only Board-approved SRRE5. So those would
9 be the SRREs approved in 1995 or earlier.

10 BOARD MEMBER CHESBRO: So the question remains
11 whether or not a jurisdiction that's on this list that we
12 were just talking about should be given some privilege that
13 a jurisdiction that submitted on time is being -- not being
14 allowed. So I think there was some concern on the committee
15 members' part on the equity involved in that.

16 MS. TERHAAR: We can come back to the committee
17 and follow up on that option. But for this particular item
18 I think it goes beyond the scope.

19 BOARD MEMBER CHESBRO: What's on the agenda?

20 MS. TERHAAR: Exactly.

21 BOARD MEMBER CHESBRO: I think we will, if the
22 other committee members agree, take up the other part of the
23 topic at a future committee meeting, but that's not -- this
24 is limited to those jurisdictions that have SRREs already.

25 BOARD CHAIRMAN PENNINGTON: Okay. Any other

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1 comments?

2 Okay. We're ready for a motion if someone —

3 BOARD MEMBER CHESBRO: I will move it.

4 I suppose there's still a theory that some

5 jurisdiction -- I guess you didn't get any slips of anybody

6 asking to speak.

7 I'll just move the item.

8 BOARD MEMBER GOTCH: I'll second.

9 BOARD MEMBER CHESBRO: To approve the staff

10 recommendation as it was approved by the committee as well.

11 BOARD VICE CHAIRMAN FRAZEE: This is Items 3 and

12 4?

13 BOARD MEMBER CHESBRO: Yes.

14 BOARD CHAIRMAN PENNINGTON: Right.

15 It's been moved and seconded.

16 Will the secretary call the roll, please.

17 BOARD SECRETARY KELLY: Board Member Chesbro.

18 BOARD MEMBER CHESBRO: Aye.

19 BOARD SECRETARY KELLY: Frazee.

20 BOARD VICE CHAIRMAN FRAZEE: Aye.

21 BOARD SECRETARY KELLY: Gotch.

22 BOARD MEMBER GOTCH: Aye.

23 BOARD SECRETARY KELLY: Relis.

24 BOARD MEMBER RELIS: Aye.

25 BOARD SECRETARY KELLY: Chairman Pennington.

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1 BOARD CHAIRMAN PENNINGTON: Aye.

2 We're going to move on to Item 23.

3 I've been notified that I have to leave. I'm

4 going to turn this over to the Vice Chairman.

5 And then following, I will try to be back.

6 Following the Board meeting there will be a closed session

7 in the Board chambers and I hope to be here for that. I

8 apologize.

9 BOARD VICE CHAIRMAN FRAZEE: On the timing of that

10 can we adjourn then for lunch and then reconvene?

11 BOARD CHAIRMAN PENNINGTON: Yes.

12 BOARD VICE CHAIRMAN FRAZEE: Okay.

13 BOARD CHAIRMAN PENNINGTON: I think you've only

14 got two more items.

15 BOARD VICE CHAIRMAN FRAZEE: Two more items.

16 BOARD CHAIRMAN PENNINGTON: Should be able to say

17 we can be back at 2:00 o'clock.

18 BOARD VICE CHAIRMAN FRAZEE: Okay.

19 BOARD CHAIRMAN PENNINGTON: If that's acceptable.

20 BOARD MEMBER GOTCH: Sounds good.

21 BOARD CHAIRMAN PENNINGTON: Thank you. I again

22 apologize I have to leave.

23 BOARD VICE CHAIRMAN FRAZEE: The next item on the

24 agenda is Item 23, the consideration of the adoption of a

25 negative declaration for the Chester/Lake Almanor Solid

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1 Waste Transfer Station, Plumas County.

2 Can we have staff report, please.

3 MR. DIER: Don Dier, manager of the Permits

4 Branch.

5 As you mentioned in your committee report,

6 Mr. Frazee, this item came out of committee. It was on a

7 2-0 vote and it would have been consent, except that we do

8 have two resolutions before the Board today.

9 Resolution 96-105 adopts the negative declaration

10 that the staff prepared and to support the permit action.

11 And then Resolution 96-104 would concur in the

12 issuance of Permit 32-AA-0022.

13 I can provide more detail if you like, but that's

14 pretty much the bottom line from the committee's

15 recommendation.

16 BOARD VICE CHAIRMAN FRAZEE: So the 96-105 is the

17 one we need to take the first action on?

18 MR. DIER: That's correct.

19 BOARD VICE CHAIRMAN FRAZE: A motion would be in

20 order.

21 BOARD MEMBER RELIS: I'll move concurrence with

22 Resolution No. 96-105.

23 BOARD VICE CHAIRMAN FRAZEE: Is there a second?

24 BOARD MEMBER CHESBRO: Second it.

25 BOARD VICE CHAIRMAN FRAZEE: The secretary will

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1 call the roll, please.

2 BOARD SECRETARY KELLY: Board Member Chesbro.

3 BOARD MEMBER HESBRO: Aye.

4 BOARD SECRETARY KELLY: Frazee.

5 BOARD VICE CHAIRMAN FRAZEE: Aye.

6 BOARD SECRETARY KELLY: Gotch.

7 BOARD MEMBER GOTCH: Aye.

8 BOARD SECRETARY KELLY: Relis.

9 BOARD MEMBER RELIS: Aye.

10 BOARD SECRETARY KELLY: Chairman Pennington.

11 BOARD VICE CHAIRMAN FRAZEE: The motion is

12 carried.

13 And then the other item, the Permit Decision

14 96-104, if there's no objection we'll substitute the roll

15 call on that item.

16 Now Item 25.

17 MR. WHITNEY: Good morning, Mr. Chairman and

18 members.

19 Item 25 has to do with so-called AB 59. And for benefit of

20 the Board members that weren't a party to the committee

21 dialogue, I'll give just a little bit of

22 background.

23 The Board will recall that in March 29th of 1995

24 general methodology for placement of waste facilities into

25 a tiered regulatory structure was adopted by the Board. And

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1 subsequently the Board has directed that we proceed with all
2 the waste categories in placing those categories in the
3 tiered approach.

4 To date we have only the compost regulations and
5 the contaminated soils regulations that have been placed in
6 the tiers. This leaves several other categories that have
7 been not placed in the tiers, some of which do not have
8 permits because they are new facilities.

9 AB 59, October 16th, 1996, among many other
10 things, required that by October 16th, 1995, among other
11 things required by a year later October 16, 1996, that all
12 new facilities, that all facilities that do not have permits
13 have permits or, as the AB 59 requires, the LEAs will be
14 required to issue cease and desist orders.

15 Therefore staff, being desirous to not
16 unnecessarily cease operations for needed facilities, made a
17 survey of the LEAs in the last couple of months by telephone
18 and that survey indicated to us that the ones that are in
19 most jeopardy are generally the smaller transfer stations
20 type facilities, i.e., drop boxes in rural areas, and that
21 many of the LEAs were holding up processing full solid waste
22 facilities permits for these due to the expense and the time
23 and other procedures that would be costly and time
24 consuming.

25 Therefore the committee considered alternatives

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1 for assisting the LEAs in getting these small category — 2 this category, which has a small number of facilities in it,

3 actually permitted by the 16th so that they would not be

4 required to close them down, thereby causing illegal dumps

5 and other negative impacts.

6 At the committee meeting staff presented three

7 options.

8 One would be no Board action at all, which would

9 mean that everybody is on their own and on October 16th

10 those that haven't gotten a full facilities permit or a

11 tiered permit would be issued a cease and desist order.

12 Another option was promulgate emergency

13 regulations at this time, which would solve the problem.

14 A third option, which is actually Option 1 as we

15 presented it in committee, was to accelerate the slotting of

16 the transfer station category on an accelerated basis. This

17 would not only catch those that we think are in most

18 jeopardy of the deadline, which would be the small

19 facilities, but it would also slot the large facilities as

20 well, which presumably would fall into the higher tiers,

21 full facilities permit, standardized permit, and such.

22 The committee, after some discussion, actually

23 adopted a combination of things, in effect creating a new

24 option that's a modified Option 1. And that is in your

25 agenda packet under Roman numeral II, and I'll outline those

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1 steps briefly.

2 First of all, we would accelerate the promulgation

3 of the regulations for the transfer station category. And I

4 have a schedule here that I'll pass out to the Board for you

5 to peruse and I'll talk about that in just a moment.

6 secondly, to advise the LEAs by letter that we are

7 going to attempt to do this and what our estimated schedule

8 is.

9 Third, to advise the LEA5 that they may proceed

10 with the issuance of full facilities permits or they can, if

11 they choose not to, wait for the promulgation of our

12 slotting of the transfer station into tiers.

13 Fourth, that we will do everything we can to

14 assist the LEA5 and the operators in getting through this

15 process including the CEQA process in an expeditious manner

16 so that they can have the best chance of meeting the October

17 16th deadline.

18 Then finally an admonition to the LEAs and the

19 operators that notwithstanding our attempt to accelerate

20 this activity, if we do not get it done they will be

21 required to implement the law on October 17th and issue the

22 appropriate cease and desist orders for those facilities

23 that have not been issued permits.

24 That was the recommendation adopted by the

25 committee and is the recommendation before you today.

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1 I'd be happy to answer any questions.

2 Or I might indicate that I just passed out a

3 schedule. This was as a result of combined staff work of

4 the legal office, the executive staff, the legislative and

5 regulatory unit, and the P and E staff to cut down as much

6 time as we possibly could, but still have what we considered

7 to be due process in discussing the matter with the industry

8 and the LEAs as we go along.

9 I would bring your attention to one point here

10 down on where it says July 10th, 1996, in the right-hand

11 column, and July 12th. That whole July period we determined

12 that if at that time we saw that we were not going to be

13 able to make it, because issues had arisen that were

14 unexpected, that we would put before the Board at that time

15 a proposal for emergency regulations which would simply buy

16 us a little bit more time.

17 But we are not recommending that you adopt that at

18 this time, waiting to see how far we can get along with the

19 process as we've outlined it in th4s schedule.

20 BOARD VICE CHAIRMAN FRAZEE: Questions of staff on

21 this?

22 If we were to take this action then what is left

23 in this scheme of things unslotted that — and I believe

24 then they would all require full facilities permits,

25 everything else that's left that we have not slotted?

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1 MR. WHITNEY: Yes. That is true.

2 BOARD VICE CHAIRMAN FRAZEE: Can you run down

3 those?

4 MR. WHITNEY: The ones that I can think of off the

5 top of my head, there are material recovery facilities,

6 recycling facilities, contaminated soil facilities.

7 BOARD VICE CHAIRMAN FRAZEE: We have done --

8 EXECUTIVE DIRECTOR CHANDLER: Ash.

9 MR. WHITNEY: Ash and biosolids.

10 CHIEF DEPUTY DIRECTOR RICE: The only facilities,

11 for clarification, affected by the October 16th cutoff date

12 are traditional solid waste facilities. So a landfill, a

13 materials recovery facility, those that are specifically

14 defined in statute currently as a solid waste facility. You

15 will ultimately be slotting potentially other facilities

16 types in the tiers, but those aren't at this point

17 determined to be immediately affected by the October 16

18 date, because we haven't made a determination as a Board as

19 to whether or not they are solid waste facilities.

20 BOARD VICE CHAIRMAN FRAZEE: Do we have any kind

21 of ballpark figure in how many there are out there in that

22 category of unpermitted?

23 CHIEF DEPUTY DIRECTOR RICE: When we did the

24 telephone survey we were asking for solid waste facilities

25 that do not currently have a permit and are operating. And

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1 what the survey found was that it is predominantly small
2 volume transfer stations. There may additionally be some
3 compost facilities that we would find, but the presumption
4 is that they have been aware of the requirement to obtain a
5 permit. Those regulations have been in effect for some
6 time, so they were not granted any additional relief by AB
7 59.

8 BOARD VICE CHAIRMAN FRAZEE: And now that we have
9 slotted compost facilities, they're not faced with this
10 problem?

11 CHIEF DEPUTY DIRECTOR RICE: Right. If they're
12 not obtaining a permit it's not for lack of a regulatory
13 structure.

14 BOARD VICE CHAIRMAN FRAZEE: Was there anyone to
15 be heard on this?

16 Mr. Edgar, were you -- I thought you had an issue
17 related to this and maybe you've exhausted it already.

18 MR. EDGAR: Thank you for the opportunity to speak
19 today. My name is Evan Edgar from the California Refuse
20 Removal Council.

21 I do have a draft letter I submitted in writing.
22 I'm going to resubmit it on Tuesday, but focusing on the LEA
23 advisories for all waste management. So I'll leave it at
24 that today.

25 BOARD VICE CHAIRMAN FRAZEE: Okay.

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1 MR. EDGAR: Thanks.

2 BOARD VICE CHAIRMAN FRAZEE: The item is before us

3 with some recommended options.

4 BOARD MEMBER RELIS: Well, then I will move staff

5 Option 1 for concurrence.

6 BOARD MEMBER GOTCH: I'll second.

7 BOARD MEMBER CHESBRO: I assume that was as

8 modified by the committee? Option 1 as modified by the

9 committee, because it lists there —

10 BOARD MEMBER RELIS: Yes. Yes. That's correct.

11]. BOARD VICE CHAIRMAN FRAZEE: And that avoids doing

12 anything about emergency regulations at this time. Okay.

13 Now the motion is before us.

14 The secretary will call the roll, please.

15 BOARD SECRETARY KELLY: Board Member Chesbro.

16 BOARD MEMBER CHESBRO: Aye.

17 BOARD SECRETARY KELLY: Frazee.

18 BOARD VICE CHAIRMAN FRAZEE: Aye.

19 BOARD SECRETARY KELLY: Gotch.

20 BOARD MEMBER GOTCH: Aye.

21 BOARD SECRETARY KELLY: Relis.

22 BOARD MEMBER RELIS: Aye.

23 BOARD SECRETARY KELLY: Chairman Pennington.

24 BOARD VICE CHAIRMAN FRAZEE: Motion is carried.

25 Now that's all the agenda items, is that correct?

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1 And we have a time for public comment, if there's

2 anyone. We don't have any slips.

3 BOARD MEMBER RELIS: Mr. Chair, I have just for

4 open discussion I have an item I'd like to bring up. Just

5 bear with me a couple of minutes here.

6 This concerns I think what will be the essence of,

7 or in part, Mr. Edgar's communication to the Board.

8 And it concerns the guidance on odor related to

9 compost facilities.

10 The passage of AB 59 has important implications

11 for compost operations. Two of these are the October 16th

12 cease and desist requirement and the five-year permit review

13 issue.

14 Another is the statute shift responsibility for

15 odor control at compost facilities from the Air Resources

16 Board and LEAs to LEAs solely, at least on a two-year trial

17 basis.

18 As you know we've received several questions from

19 CRRC, in a recent letter from Senator Thompson and

20 Assemblyman Sher requesting that our Board develop an LEA

21 advisory for odor control at these type of facilities.

22 I take these requests seriously. In fact, I'd

23 refer to a letter I drafted a year ago, a little over a year

24 ago, to our staff regarding this technical assistance for

25 composting operations. And I have that with me and I'll

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2. give it to staff later on.

2 As I said, I raised this before. The Board needs

3 to provide technical guidance as soon as possible to the

4 composting community, that once our regulations were in

5 place, and they've long been in place.

6 The composting regulations became effective in

7 July of '95 and now AB 59 became effective as of January.

8 LEAs and operators are still seeking guidance.

9 The question that I would like to have staff

10 respond to ASAP is when and how the Board will provide

11 technical guidance to LEAs, as well as operators, regarding

12 odors at these facilities.

13 Discussion with staff I've been told that the

14 upcoming LEA training sessions, perhaps starting in July,

15 will provide a venue or offer such guidance, but at this

16 stage I do not have a plan indicating the schedule or the

17 specifics that would be in those sessions and thus I don't

18 feel we have assurances yet that effective training will

19 occur in a timely manner.

20 If training materials are be developed on this

21]. issue then they will have to be finalized well before July.

22 If that is the case, an alternative or complement to

23 training is to distribute them as part of an LEA advisory

24 prior to July.

25 Another alternative is to include the relevant

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1 materials at the next LEA round table. And that's scheduled
2 this spring.

3 If the problem is that we do not have sufficient
4 staff resources or expertise to develop this material in a
5 timely way, then another option, and it may be one that I
6 would even prefer, but this is subject to committee
7 discussion, would be to convene an expert working group to
8 develop the needed materials.

9 I believe this issue should be agendized for our
10 April P and E Committee so that a definitive signal can be
11 sent to LEAs and others regarding when and how this guidance
12 will be provided.

13 With that, I would also urge us to invite, should
14 that be calendared, representatives from the Air Resources
15 Board and some of the AQMDs, Air Quality Management
16 Districts, to learn more about how they have handled this
17 issue previously so that our program can be consistent with
18 past State regulatory policies.

19 Thank you.

20 BOARD VICE CHAIRMAN FRAZEE: Your point on
21 involving local districts and the ARB in developing our
22 advisories I think is a good one. They obviously have been
23 working in this area and should have a background of
24 material that we can adapt to our own use without us having
25 to reinvent the wheel.

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1 Yes.

2 MR. WHITNEY: I have just submitted today, as a

3 matter of fact, a proposal to the executive office for

4 proceeding.

5 There are a number of issues that have to be

6 sorted out regarding this, not the least of which is the

7 mandate of your tiered regulatory structure, which requires

8 that the LEA enforce on a performance basis rather than a

9 proscriptive basis. So the essence of my proposal is that

10 we take this to the environmental health directors and the

11 EAC, Enforcement Agency Council, have a discussion, get

12 clarity on just what we ought to do together to get into the

13 field with some explanation on how to deal with performance

14 standards rather than proscriptive.

15 Let me give you an example. In the past, LEAS

16 have been able to enforce their instruction that certain

17 operational procedures be done at a facility, i.e., turn the

18 pile so many times, hold waste only so long before you

19 process it, those kind of things. Those are no longer

20 options for the LEAs. They cannot enforce those

21 instructions any longer because the regulations as adopted

22 simply says the operator shall minimize odor impacts, noise,

23 dust, et cetera. That leaves it to the community standard

24 as a judgment of the LEA to enforce a result rather than a

25 prescription for dealing with the problem.

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1 What we'd like to do is have an in-depth dialogue
2 with the LEAs about that, what experience they've had, what
3 kind of problems they have in specific, so that we can
4 fashion some communications, whether it be in -- certainly
5 would be in our training program, but if we need something
6 out there right away, what kind of advice could we give
7 them. We need the benefit of their experience.

8 So I'm recommending that in the next couple of
9 months we take the issue -- I've already placed it on the
10 agenda of both of those organizations, one of which is
11 meeting next week. We also have a meeting with the
12 committee's advisors that we're setting up for I believe
13 Monday of next week to discuss all of this.

14 So that's where we are on the issue right at the
15 moment.

16 BOARD VICE CHAIRMAN FRAZEE: Along with that,
17 there's going to need to be a procedure on handling of or
18 the filing of complaints and maintaining the records in that
19 area.

20 And I think we saw from our most recent experience
21 in Sonoma where there was documented a whole series of the
22 complaints and the timing of those that were filed with the
23 Air Board, I understand in that case.

24 So our LEAs have to be up to speed on accepting
25 those and keeping records of them and perhaps maintaining a

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1. hotline, if you will, or available number for people to do
2 that.

3 MR. WHITNEY: There are other oddities that we
4 have to sort out. For example, the Bay Area Air Quality
5 Management District was exempted from transferring
6 complaints to the LEA. So they still handle complaints for
7 compost facilities in the Bay Area.

8 All others, if they're a compost facility, that is
9 from the notification tier up, it applies. If you're
10 excluded, if you're in the excluded tier then the AQMD would
11 still handle the excluded tier.

12 So I don't believe that's generally understood by
13 the LEA5 in the communications that we've received from them
14 and that's the dialogue we've got to have.

15 BOARD VICE CHAIRMAN FRAZEE: So those are excluded
16 because of size or agricultural exemption?

17 MR. WHITNEY: A common example is chippers and
18 grinders. They are excluded from odor complaints coming to
19 the LEA, because they are not in one of the tiers. They're
20 not a compost facility. Therefore, LEAs would handle that
21 in the traditional way they handle it, whether that be to
22 deal with it themselves or referring it to the AQMD.

23 So there's these kinds of things that I don't
24 think are clearly understand yet, and we need to have that
25 dialogue with those people who are in the field trying to

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1 make these things work.

2 BOARD VICE CHAIRMAN FRAZEE: Any other discussion

3 on this item?

4 No action needed.

5 BOARD MEMBER RELIS: So we can calendar it, if we

6 can.

7 BOARD VICE CHAIRMAN FRAZEE: Okay. Is there

8 anything else to come before the Board? Any other

9 communications?

10 Staff?

12. We will stand in recess until 2:00 p.m., at which

12 time the Board will reconvene in closed session for the

13 purpose of discussing either personnel and/or litigation.

14 (Thereupon the meeting was recessed

15 at 11:45 a.m.)

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1 CERTIFICATE OF SHORTHAND REPORTER

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3 I, JANET H. NICOL, a Certified Shorthand Reporter

4 of the State of California, do hereby certify that I am a

5 disinterested person herein; that I reported the foregoing

6 meeting in shorthand writing; that I thereafter caused my

7 shorthand writing to be transcribed into typewriting.

8 I further certify that I am not of counsel or

9 attorney for any of the parties to said meeting, or in any

10 way interested in the outcome of said meeting.

11 IN WITNESS WHEREOF, I have hereunto set my hand

12 this 12th day of April 1996.

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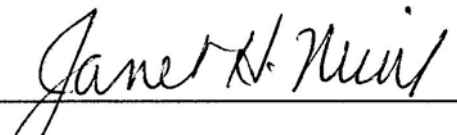
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Janet H. Nicol
Certified Shorthand Reporter
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